

**CONTRACT  
FOR THE PROVISION OF  
SOLID WASTE SERVICES**

**Executed Between the  
City of Carlsbad, CA and**

**Coast Waste Management, Inc.  
(Contractor)**

This 15<sup>th</sup> day of February

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This Solid Waste Services Contract ("Contract") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, ("Effective Date") by and between the **City of Carlsbad**, hereinafter referred to as "City" and **Coast Waste Management, Inc.**, a California corporation, hereinafter referred to as "Contractor".

Now, therefore, in consideration of the mutual covenants, Contracts and consideration contained herein, the City and Contractor hereby agree as hereinafter set forth:

## **ARTICLE 1. DEFINITIONS**

For the purpose of this Contract, the definitions contained in this Article shall apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender. The meaning of terms or words not defined herein shall be as commonly understood in the solid waste Collection Services industry when the common understanding is uncertain.

### **1.01 ACT**

"Act" means the California Integrated Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

### **1.02 AFFILIATE**

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business which has a direct or indirect ownership in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Contract, shall apply.

### **1.03 ANNUAL DIVERSION REPORT**

"Annual Diversion Report" means the annual report submitted by the Contractor to the City describing the previous year's diversion activities, diversion percentages and associated calculations and the description of the diversion activity planned for the upcoming year, if applicable. The Annual Diversion Report shall be prepared in a manner that directly corresponds to the reporting requirements of Cal Recycle and the Act, as amended.

### **1.04 BILLINGS**

"Billings" or "Billing" or "Bill" means the statement(s) of charges provided to Customers for services rendered by City or Contractor, as the case may be.

### **1.05 BIN**

"Bin" means a detachable metal or rigid plastic container with a capacity of less than ten (10) cubic yards, equipped with a lid, and designed for mechanical pick-up by collection vehicles.

### **1.06 BIN SERVICE**

"Bin Service" means Solid Waste Services in which a Bin is used for the Collection of Solid Waste.

#### **1.07 BIOHAZARDOUS OR BIOMEDICAL WASTE**

"Biohazardous or Biomedical Waste" means any waste which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are waste resulting from the operation of medical clinics, hospitals, and other facilities processing wastes which may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves.

#### **1.08 BULKY WASTE**

"Bulky Waste" means Solid Waste that cannot and/or would not typically be accommodated within a Cart. General examples include furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"), residential waste (including wood waste, tree trunks and large branches if no larger than eighteen inches (18") in diameter and four feet (4') in length, scrap wood, and debris from building remodeling not exceeding one cubic yard per collection. A specific list indicating the materials that will be considered Bulky Waste and will be accepted is included as Exhibit 5. In the event a question ever arises as to whether a specific item or category of items meets the definition of Bulky Waste and will be accepted, the Contract Administrator will make a final determination. Notwithstanding the above, Bulky Waste does not include materials herein defined as Exempt Waste, and these materials will not be accepted. Bulky Waste must have been generated on the Customer's Premises.

#### **1.09 CALRECYCLE**

"CalRecycle" means the California Department of Conservation, Division of Recycling.

#### **1.10 CAN**

"Can" means a container supplied by the Customer for collection of solid waste.

#### **1.11 CART**

"Cart" means a plastic Container with a hinged lid and wheels serviced by an automated truck with a capacity of no less than 30- and no greater than 101-gallons.

#### **1.12 CELL PHONES**

"Cell Phones" means all telephones used for mobile or cellular communications including batteries used to power cell phones.

#### **1.13 CITY**

"City" means the City of Carlsbad, California.

#### **1.14 CITY COUNCIL**

"City Council" means the City Council of the City of Carlsbad, California.

#### **1.15 CITY FACILITIES**

"City Facilities" means those City properties listed in Exhibit 4 which is attached to and included in this Contract.

#### **1.16 CITY MANAGER**

"City Manager" means the City Manager of the City of Carlsbad or the City Manager's designee.

**1.17 COLLECTION SERVICE**

"Collection Service" means the process whereby Solid Waste is removed and transported from within the City.

**1.18 COMMERCIAL PREMISES**

"Commercial Premises" means Premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property.

**1.19 COMMERCIAL SERVICE**

"Commercial Service" means Solid Waste Services performed at or for Commercial Premises.

**1.20 COMMINGLED**

"Commingled" or "Commingle" means the placement by the Waste Generator of materials that would otherwise become Solid Waste (such as glass bottles, metal cans, newspapers, cardboard, plastic containers, etc.) together into a Container(s) for the purpose of allowing the Recycling of such materials.

**1.21 COMPACTOR**

"Compactor" refers to Bin or Roll-off Box with a mechanical apparatus that serves to compact the content of the container, regardless of size, whether stationary or mobile.

**1.22 CONSTRUCTION AND DEMOLITION DEBRIS**

"Construction and Demolition Debris" means Solid Waste generated at a Premises that is directly related to construction, remodeling, repair or demolition activities occurring thereon.

**1.23 CONTAINER**

"Container" means any and all types of receptacles, including Cans, Carts, Crates, Bins and Roll-Off Boxes.

**1.24 CONTAMINATION FEE**

"Contamination Fee" means an amount charged by Contractor to a MFD Customer or Commercial Customer, to recover its costs for separating Solid Waste placed in Recyclable Materials or Green Waste Containers, or for arranging special, unscheduled Collections.

**1.25 CONTRACT**

"Contract" means this Solid Waste Services Contract and all amendments hereto.

**1.26 CONTRACT ADMINISTRATOR**

"Contract Administrator" means the person, or his designee, designated by the City to administer and monitor the provisions of this Contract.

**1.27 CONTRACT YEAR**

"Contract Year" means each twelve (12) month period from July 1 to June 30, beginning July 1, 2012.

**1.28 CONTRACTOR**

"Contractor" means the person or entity entering into this Contract with the City, as identified in the introductory paragraph of this Contract.

**1.29 COUNTY**

"County" means San Diego County, California.

**1.30 CRATE**

"Crate" means an approximately twelve (12)-gallon open top plastic container used for the Collection of Recyclable Materials.

**1.31 CUSTOMER**

"Customer" means a Person receiving Solid Waste Services from Contractor pursuant to the terms of this Contract.

**1.32 DISPOSAL**

"Disposal" means the ultimate disposition of Solid Waste Collected by Contractor at a landfill or otherwise in full regulatory compliance.

**1.33 DISPOSAL SITE(S)**

"Disposal Site(s)" means the Solid Waste Handling Facility or Facilities utilized for the ultimate Disposal of Solid Waste Collected by Contractor.

**1.34 ELECTRONIC WASTE**

"Electronic Waste" means "Covered Electronic Wastes" as defined in the Act (Section 42463 of Public Resources Code) including discarded electronic equipment such as, but not limited to, television sets, computer monitors, central processing units (CPUs), laptop computers, and peripherals (e.g., external computer hard drives, computer keyboards, computer mice, and computer printers), and other similar items commonly known as "brown goods" and "e-waste". Electronic Waste excludes oversized items of that cannot be handled by one (1) person.

**1.35 EXEMPT WASTE**

"Exempt Waste" means Biohazardous or Biomedical Waste, Hazardous Waste, Sludge, Designated Waste, Stable Matter, waste tires, liquid wastes, Green Waste or lumber that is more than four (4) feet in length in its longest dimension or two (2) feet in diameter, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, and those wastes under the control of the Nuclear Regulatory Commission.

**1.36 FOOD WASTE**

"Food Waste" means Solid Waste comprised of animal, fruit or vegetable matter that attends the preparation, consumption, decay, dealing in or storage of meats, fish, fowls, fruits or vegetables.

**1.37 FRANCHISE FEE**

"Franchise Fee" means the payments paid to city by the contractor pursuant to Section 8.02.

**1.38 GREEN WASTE CART**

"Green Waste Cart" is a heavy-plastic receptacle with a rated capacity of at least thirty (30) gallons and not more than one-hundred one (101) gallons, having a hinged, tight-fitting lid, and wheels, that is approved by the City for the Collection of Green Waste and is appropriately labeled as a Green Waste Cart.

**1.39 GREEN WASTE**

"Green Waste" means any vegetative matter resulting from normal yard and landscaping maintenance that is not more than four (4) feet in its longest dimension or six (6) inches in

diameter. Green Waste includes plant debris, such as grass clippings, leaves, pruning, weeds, branches, brush, Holiday trees, and other forms of organic waste that is generated at the Premises wherein the Green Waste is collected. Green Waste does not include items herein defined as Exempt Waste or materials not normally produced from gardens or landscape areas, such as brick, rock, gravel, large quantities of dirt, concrete, sod, non-organic wastes, oil, and painted or treated wood products

#### **1.40 GROSS RECEIPTS**

"Gross Receipts" means any and all revenue received from Billings by City or Contractor for the Collection, processing, Disposal and transportation of Solid Waste pursuant to this Contract, in accordance with generally accepted accounting principles, without subtracting the Franchise Fee, the AB 939 Fee, any other payment to City, or any other cost of doing business. Revenue received by the Contractor from the sale of Recyclable Materials, including California Redemption Value, shall not be considered as Gross Receipts.

#### **1.41 HAZARDOUS WASTE**

"Hazardous Waste" is any material which is defined as a hazardous waste under California or United States law or any regulations promulgated pursuant to such law, as such law or regulations may be amended from time to time.

#### **1.42 HOUSEHOLD BATTERIES**

"Household Batteries" means disposable or rechargeable dry cells (e.g., A, AA, AAA, B, C, D, 9-volt, button-type) commonly used as power sources for household or consumer products including, but not limited to, nickel-cadmium, nickel metal hydride, alkaline, mercury, mercuric oxide, silver oxide, zinc oxide, nickel-zinc, nickel iron, lithium, lithium ion, magnesium, manganese, and carbon-zinc batteries, but excluding automotive lead acid batteries.

#### **1.43 HOUSEHOLD HAZARDOUS WASTE (HHW)**

"Household Hazardous Waste" means Hazardous Waste generated at a residential property.

#### **1.44 LATE FEE**

"Late Fee" means amounts charged by Contractor to reimburse it for administrative costs arising from payment delinquency, including the cost of notices and adjustments to its accounting records, and may include a fixed fee, interest on past due amounts, or non-sufficient fund (NSF) fees.

#### **1.45 MATERIALS RECOVERY FACILITY ("MRF")**

"Materials Recycling Facility" or "MRF" means a fully permitted facility where Solid Waste, Recyclable Materials, and other materials are processed, sorted or separated for the purposes of recovering reusable or Recyclable Materials, processing or composting.

#### **1.46 MAXIMUM CONTRACTOR COMPENSATION**

"Maximum Contractor Compensation" means the maximum amount that Contractor may receive from Billings to Customers, as full, entire and complete compensation due pursuant to this Contract for all labor, equipment, materials and supplies, taxes, insurance, bonds, letters of credit, overhead, disposal, transfer, profit and all other things necessary to perform all the services required by this Contract in the manner and at the times prescribed. Contractor has the right in its sole discretion to accept less than the maximum amount.



**1.47 MULTI-FAMILY DWELLING (MFD)**

"Multi-Family Dwelling" or "MFD" means a distinct living unit within a Multi-Family Residential Complex.

**1.48 MULTI-FAMILY RESIDENTIAL COMPLEX**

"Multi-Family Residential Complex" means any building or structure, or portion thereof, located in City which is used for residential housing purposes, irrespective of whether residency at that property is transient, temporary, or permanent, and having four (4) or more distinct living units.

**1.49 NON-COLLECTION NOTICE**

"Non-Collection Notice" is a form developed and used by the Contractor, as approved by the City, to notify Customers of the reason for non-collection of materials set out by the Customer for Collection by Contractor pursuant to this Contract.

**1.50 OCCUPANT**

"Occupant" refers to a person who occupies Premises.

**1.51 ON-CALL SERVICE**

"On-Call Service" means Collection Service provided by Contractor that is not regularly scheduled or is scheduled more than twenty-four (24) hours in advance. On-Call Service is initiated by a Customer by calling, emailing, or requesting the service in person at Contractor's office.

**1.52 OVERAGE FEE**

"Overage Fee" means a fee charged by Contractor to a MFD Customer or Commercial Customer to compensate it for expenses arising from overfilling of Containers by a Customer, including documenting the incident, cleaning up litter and debris, and paying additional disposal charges.

**1.53 OWNER**

"Owner" means the Person holding legal title to the real property constituting the Premises to which Solid Waste Service is to be provided under this Contract.

**1.54 PERSON**

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of San Diego, cities, and special purpose districts.

**1.55 PHARMACEUTICAL WASTE**

"Pharmaceutical Waste" means items intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals. Pharmaceutical waste is synonymous with drug waste, unused or expired medication, or unused or expired drugs, prescription and over-the-counter human drugs, veterinary drugs, diagnostic agents, and nutritional supplements.

**1.56 PREMISES**

"Premises" means any land or building where Solid Waste is generated or accumulated.

#### **1.57 PROCESSING FACILITY**

"Processing Facility" means a facility where materials are prepared, treated, consolidated or converted through some special method such as baling, crushing, shredding, chipping, grinding, extracting, and mechanical or hand classification.

#### **1.58 RATE YEAR**

"Rate Year" means each July 1 through June 30 period during the Term, beginning July 1, 2012, or portion thereof.

#### **1.59 RECYCLING**

"Recycling" means the processing of Solid Waste for the purpose of returning them to the economy in the form of raw materials for new, reused, or reconstituted products, or other uses resulting in diversion from landfill disposal.

#### **1.60 RECYCLABLE MATERIALS**

"Recyclable Materials" means those materials that are capable of being recycled. Recyclable Materials include: newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, Kraft brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; small scrap and cast aluminum (not exceeding ten (10) pounds in weight nor two (2) feet in any dimension for any single item); steel including "tin" cans and small scrap (not exceeding ten (10) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; mixed plastics including, but not limited to, plastic containers (1-7), and bottles including containers made of HDPE, LDPE, PET, or PVC; and aseptic containers. Polystyrene foam and film plastic, including plastic bags are specifically excluded from collection and processing.

#### **1.61 RECYCLING BIN**

"Recycling Bin" means a metal or rigid plastic container, with a capacity of two (2) cubic yards up to and including six (6) cubic yards, designed or intended to be mechanically dumped into a loader packer-type recycling truck, that is approved for such purpose by the City and is appropriately labeled as a Recycling Bin.

#### **1.62 RECYCLING CART**

"Recycling Cart" is a heavy-plastic receptacle with a rated capacity of at least thirty (30) gallons and not more than one-hundred one (101) gallons, having a hinged, tight-fitting lid, and wheels, that is approved by the City for the Collection of Recyclable Materials and is appropriately labeled as a Recycling Cart.

#### **1.63 RESIDENTIAL PREMISES**

"Residential Premises" means Premises upon which Single-Family or Multi-Family Dwellings exist, including, without limitation, apartments, boarding or rooming houses, condominiums, mobile homes, efficiency apartments, and second units.

#### **1.64 RESIDENTIAL SERVICE**

"Residential Service" means Solid Waste Services performed at and for Residential Premises.

#### **1.65 RE-START FEE**

"Re-start Fee" means a fee charged by Contractor where re-establishing service following a suspension of service due to non-payment. However, the Re-start Fee will not apply to existing

Commercial Customers that move to a new business location within the City, or to a change in ownership at a MFD currently receiving service.

**1.66 ROLL-OFF BOX**

"Roll-Off Box" means a metal container with a capacity of (10) or more cubic yards that is normally loaded onto a motor vehicle and transported to an appropriate facility.

**1.67 ROLL-OUT SERVICE**

"Roll-out Service" means a service provided to MFD's and Commercial Premises where Contractor's driver must dismount the Collection vehicle and move one (1) or more Bins in order to accomplish Collection using the standard Collection vehicle.

**1.68 SCOUT SERVICE**

"Scout Service" means a service provided to MFD's or Commercial Premises where a smaller truck is required to move one (1) or more Bins to a location where Collection can be accomplished using the standard Collection vehicle.

**1.69 SERVICE AREA**

"Service Area" means the corporate limits of the City of Carlsbad.

**1.70 SHARPS WASTE**

"Sharps waste" includes, but is not limited to, hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications.

**1.71 SINGLE-FAMILY DWELLING (SFD)**

"Single-Family Dwelling" or "SFD" means a distinct living unit within a Single-Family Residential Premises.

**1.72 SINGLE-FAMILY RESIDENTIAL PREMISES**

"Single-Family Residential Premises" means any building or structure, or portion thereof, in City which is used for residential housing purposes, irrespective of whether residence therein is transient, temporary or permanent, and having three (3) or fewer distinct living units, in which each of the premises receives individual solid waste Collection Service using Carts.

**1.73 SOLID WASTE**

"Solid Waste" means all discarded putrescible and non-putrescible solid, semisolid, and liquid wastes, including refuse, Construction and Demolition Debris, Bulky Waste, Recyclable Materials, and Green Waste, Food Waste, or any combination thereof which are permitted to be disposed of in a Class III landfill, and which are included in the definition of "Non-Hazardous Solid Waste" set forth in the California Code of Regulations. Solid Waste does not include Exempt Waste.

**1.74 SOLID WASTE CART**

"Solid Waste Cart" is a heavy-plastic receptacle with a rated capacity of at least thirty (30) gallons and not more than one-hundred one (101) gallons, having a hinged, tight-fitting lid, and wheels, that is approved by the City for the Collection of Solid Waste and is appropriately labeled as a Solid Waste Cart.

**1.75 SOLID WASTE SERVICES**

"Solid Waste Services" means the Collection, transport and Recycling of Solid Waste.

**1.76 SOURCE SEPARATED**

"Source Separated" means the segregation by the Waste Generator of materials (such as glass bottles, metal cans, newspapers, cardboard, plastic containers, food waste, etc.) into separate Containers(s) for each material for the purpose of allowing the Recycling of such materials.

**1.77 SPLIT BIN**

"Split Bin" means a Bin that is divided in two parts where one side is designated for Commingled Recyclable Materials and the other side designated for Solid Waste.

**1.78 TRANSFER STATION**

"Transfer Station" means a facility that receives Solid Waste from collection vehicles and transfers the material to larger vehicles for transport to landfills and other destinations. Transfer Stations may or may not also include MRFs, transferring residual Solid Waste (Solid Waste left after the sorting of Recyclable Materials) to landfills and Recyclable Materials, including Green Waste and/or Construction and Demolition debris, to processors, brokers or end-users.

**1.79 UNIVERSAL WASTE OR U-WASTE**

"Universal Waste" or "U-Waste" means all waste defined by Title 22, Subsections 66273.1 through 66273.9 of the California Code of Regulations. These include, but are not limited to, batteries, fluorescent light bulbs, or mercury switches.

**1.80 WASTE GENERATOR**

"Waste Generator" means any Person as defined by the California Public Resources Code, whose act or process produced Solid Waste as defined in the California Public Resources Code.

**1.81 WHITE GOODS**

"White Goods" means inoperative and discarded refrigerators, microwave ovens, ranges, water heaters, freezers, and other similar household appliances.

**1.82 WORK DAY**

"Work Day" means any day, Monday through Saturday that is not a holiday as set forth in Section 7.01.2 of this Contract.

**ARTICLE 2. TERM OF CONTRACT**

**2.01 COMMENCEMENT OF SERVICES**

The obligations of the parties hereunder, and the provision of Solid Waste Services by Contractor, shall commence on July 1, 2012. Contractor understands and agrees that the time between the date this Contract is signed and July 1, 2012, is intended to provide Contractor with ample and sufficient time to transition to the new services specified in this Contract.

**2.02 TERM**

Unless terminated in accordance with Article 13, the term of this Contract shall terminate on June 30, 2022.

**2.03 OPTION TO EXTEND**

At its sole discretion the City may offer the Contractor the option to extend the Term of this Contract for up to three (3) years. Notice by the City of the City's offer to extend the Contract shall be given at least (18) months prior to the expiration of the original term. Contractor shall

provide written notice to the City as to whether Contractor accepts or rejects the City's offer within two weeks (14 days) of the date of the offer. If Contractor fails to provide such notice to the City within two weeks, the City's offer shall be deemed withdrawn and the City shall have no obligation to extend the term of this Contract beyond the current expiration date.

### **ARTICLE 3. SCOPE OF CONTRACT**

#### **3.01 GRANT OF CONTRACT**

Except as otherwise provided in this Contract, the Contractor is herein granted the exclusive right to provide Residential Service and Commercial Service in the Service Area. No other solid waste or recycling services shall be exclusive to the Contractor.

#### **3.02 LIMITATIONS ON SCOPE OF GRANT TO CONTRACTOR**

The right granted to the Contractor is exclusive, except for the categories of solid waste listed below. The granting of this right does not preclude the categories of solid waste listed below from being delivered to, collected, or transported by others as provided below, provided that no person is excused from obtaining from the City any authorization that is required by law. Contractor may, but is not obligated to, provide the services described below on a non-exclusive basis.

- A. Source-separated Recyclable Materials that the Waste Generator sells to, or otherwise receives compensation from, other persons in a manner resulting in a net payment to the customer after consideration of collection, handling, or processing costs;
- B. Solid Waste, including Recyclable Materials, Green Waste and Bulky Waste, which is removed from any Premises by the Waste Generator, and which is transported personally by such Generator (or by its employees) to a processing or disposal facility in a manner consistent with all applicable laws and regulations;
- C. The donation of source-separated materials to youth, civic, charitable, or other nonprofit organizations;
- D. Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, Sections 14500, et seq., California Public Resources Code;
- E. Green Waste removed from premises by a gardening, landscaping, or tree trimming company using its own equipment and employees as an incidental part of a total service offered by the company, as opposed to a hauling service;
- F. Construction and Demolition Waste that is incidentally removed by a duly-licensed construction or demolition company, as part of a total service offered by such licensed company or by the City, and where the licensed company uses its own equipment and employees;
- G. The collection, transfer, transport, Recycling, processing, and disposal of animal waste and remains from slaughterhouse or butcher shops for use as tallow, or dead animals;
- H. The collection, transfer, transport, Recycling, processing, and disposal of Hazardous Substances, Hazardous Waste, Biohazardous Waste, Exempt Waste, and radioactive waste regardless of its source;

- I. The collection, transfer, transport, Recycling, processing, and disposal of Solid Waste by City through City officers or employees in the normal course of their employment; and,
- J. Solid Waste Services for governmental agencies other than City, which may have facilities in City, but over which City has no jurisdiction in connection with the regulation of Solid Waste.

## **ARTICLE 4. COLLECTION SERVICES**

### **4.01 GENERAL**

The work to be done by Contractor pursuant to this Contract shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Contractor of the duty to furnish all other items as may be required, whether enumerated elsewhere in the Contract or not.

The work to be done by Contractor pursuant to this Contract shall be accomplished in a thorough and professional manner so that all Customers are provided reliable, courteous and high-quality Solid Waste Services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this section, whether such other aspects are enumerated elsewhere in the Contract or not.

### **4.02 SOLID WASTE COLLECTION**

#### **4.02.1 Single-Family Dwelling (SFD) Solid Waste Collection**

On or before July 1, 2012, Solid Waste Cart deliveries shall be completed and Contractor shall collect and remove Solid Waste from all SFDs once per week from Contractor-provided Solid Waste Carts. Per Section 6.06.1, Customers may select the desired Cart size in advance of the initial Solid Waste Cart delivery. In addition, within ninety (90) days following the initial Solid Waste Cart delivery, Customers may receive one (1) free Solid Waste Cart exchange for a different-sized Cart. Thereafter, Customers are entitled to one (1) free Solid Waste Cart replacement during the Term. No discount will be given for using a sixty-four (64) gallon Solid Waste Cart.

Customers may request additional Solid Waste Carts for an additional charge per Cart per month in accordance with the approved rate schedule.

Contractor shall collect Carts curbside.

Collection of Green Waste, Recyclable Materials, and Solid Waste from the SFD shall occur on the same day each week.

Contractor shall provide temporary Solid Waste collection service to SFD's, upon request of the Customer, using Bins or Roll-offs. Temporary service shall be available up to ninety (90) days.

#### **4.02.2 Multi-Family Dwellings (MFD) Solid Waste Collection**

Contractor shall collect Solid Waste from MFDs as frequently as scheduled by Customer, but not less than once per week and more frequently if required to handle the waste

generated at the Premises where the Bins are located. The Contractor shall provide Bins as part of the Collection Service at rates set forth in Exhibit 1, as adjusted. The size of the Bins and the frequency (above the minimum) of Collection shall be determined between the Customer and the Contractor. Size and frequency shall be sufficient to provide that no Solid Waste need be placed outside the Bins. If a Customer appeals the requirement to subscribe to a Bin service as opposed to Cart service and Contract Administrator determines that Cart service would be appropriate, Contract Administrator may waive Customer's requirement to subscribe to Bin service, and such Customer will be considered a SFD Customer.

Contractor shall allow MFD Customers to use Bins for Solid Waste Collection that are shared by the Occupants of the Premises. Contractor shall provide one or more Bin(s) to such Customers as requested by Customer, provided that capacity shall be sufficient to provide that no Solid Waste need be placed outside the Bin(s). City shall make final determination as to the number and size of Bins, and frequency of collection to be provided to Customers.

Contractor shall give special consideration when determining the collection location for Multi-Family Residential Complexes to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The designated collection location, if disputed by Customer or Contractor, shall be determined by the City. Additionally, if in the City's opinion the location of an existing collection location is inappropriate, City may require the Customer or Contractor to relocate the collection Containers.

Contractor shall provide special services such as Roll-out Service, or Scout Service or use of locking Containers when requested by the Customer, at the rate set forth in Exhibit 1, as adjusted. Contractor may provide customized Containers at the request of the Customer, including Containers of a size not typically provided, where the request can reasonably be accommodated, at the rate agreed to with the Customer, with any disputes as to the Rate resolved by the Contract Administrator.

Contractor shall provide temporary collection service to MFD's, upon request of the Customer, using Bins, or Roll-offs.

#### **4.02.3 Commercial Premises Solid Waste Collection**

Contractor shall collect Solid Waste from Commercial Premises as frequently as scheduled by Customer, but not less than once per week and more frequently if required to handle the waste generated at the Premises where the Containers are located, or in accordance with applicable rules and regulations. The Contractor shall provide Containers as part of the Collection Service at rates set forth in Exhibit 1, as adjusted. The size of the container and the frequency (above the minimum) of Collection shall be determined between the Customer and the Contractor. Size and frequency shall be sufficient to provide that no Solid Waste need be placed outside the Container.

Specifically, the Contractor shall offer the following Collection Service methodologies to Commercial Customers:

- A. Individual Bin or Cart Service. Contractor shall allow each Commercial Premises to use Bins, Split Bins, Compactors, or Roll-Off Boxes for Solid Waste Collection. If the Contract Administrator and Contractor agree that Cart service for a

Commercial Premises generating small amounts of Solid Waste is appropriate, Contractor shall Collect, at a minimum of once per week from such Commercial Premises, the Solid Waste which has been compacted or otherwise placed, kept or accumulated in Carts and placed at designated location, meeting Carlsbad Municipal Code requirements prior to Contractor's normally weekly Collection time. This small-volume Commercial Collection service shall be no more than two (2) carts per Commercial Premises per week.

- B. Centralized Bin or Cart Service. Contractor shall allow each Commercial Premises to use Bins or Carts for Solid Waste Collection that are shared by the Occupants of two or more adjacent Commercial Premises. In such case, Contractor shall provide one or more Carts or Bins as requested by the Customer(s) provided that capacity shall be sufficient to provide that no Solid Waste need be placed outside the Container(s).
- C. Permanent Roll-Off Boxes and Compactors. Contractor shall allow a Customer to use a Roll-Off Box or Compactor for Solid Waste Collection to meet the Customer's permanent Disposal needs. In such case, Contractor shall provide Customer with a choice of Container capacities including ten (10), twenty (20), and forty (40) cubic yards. Contractor shall offer Customers the option to purchase or lease Roll-Off Boxes or Compactors through either the Contractor or an outside vendor. Regular maintenance of Compactors that are leased or provided by Contractor shall be provided by Contractor (or outside vendor) as frequently as needed to keep the Compactors in good working order and functioning at high compaction levels. Contractor is not required to provide maintenance for Compactors obtained by the Customer through an outside vendor.
- D. Special Services. Contractor shall provide special services such as Roll-out Service, or Scout Service or use of locking Containers when requested by the Customer, at the rate set forth in Exhibit 1, as adjusted. Contractor may provide customized Containers at the request of the Customer, including Containers of a size not typically provided, where the request can reasonably be accommodated, at the rate agreed to with the Customer, with any disputes as to the rate resolved by the Contract Administrator.
- E. Temporary Services. Contractor shall provide temporary collection service to Commercial Premises, upon request of the Customer, using Bins, or Roll-offs.

#### **4.02.4 City Facilities Solid Waste and Recyclable Materials Collection**

Contractor shall provide scheduled and temporary Solid Waste, Recyclable Materials, and Green Waste collection at City Facilities as frequently as scheduled by the City, but not less than once per week. City Facilities will be provided Collection Services at no charge. Contractor shall allow each City Facility to use Carts, Bins, Compactors, or Roll-Off Boxes for Solid Waste, Recyclable Materials, and Green Waste Collection, as determined by City. The list of City Facilities receiving collection service, Container size, and frequency or service is set forth in Exhibit 4 included herein. City may change the service levels and number of facilities serviced during the term of the Contract without any additional compensation paid to the Contractor. City shall include any such changes on a revised Exhibit 4, collections shall be scheduled at a time mutually agreed upon by Contractor and City. Solid Waste services at City Facilities necessitated by unusual or



extraordinary activities beyond those typically expected of a municipal corporation, including, but not limited to, renovations to city facilities, damage caused by flood, earthquake, or other natural disasters will be charged to the City at the rates as set forth in Exhibit 1, as adjusted.

#### **4.03 RECYCLING COLLECTION**

##### **4.03.1 Single-Family Dwelling (SFD) Recycling Collection**

On or before July 1, 2012, Recycling Cart deliveries shall be completed and Contractor shall collect and remove Commingled Recyclable Materials from all SFDs once per week from Contractor-provided Recycling Carts. Per Section 6.06.1, Customers may select the desired Cart size in advance of the initial Recycling Cart delivery. In addition, within ninety (90) days following the initial Recycling Cart delivery, Customers may receive one (1) free Recycling Cart exchange for a different-sized Cart. Thereafter, Customers are entitled to one (1) free Recycling Cart replacement during the Term.

Customers may request up to two (2) additional Recycling Carts of the same size at no additional charge. Delivery of additional Recycling Carts beyond three (3) will be at the rate set forth in Exhibit 1, as adjusted. No discounts will be given for using 64-gallon or 35-gallon Recycling Carts.

Contractor shall collect Carts curbside.

##### **4.03.2 Multi-Family Dwellings (MFD) Recycling Collection**

Contractor shall collect Commingled Recyclable Materials from MFDs as frequently as scheduled by Customer, but not less than once per week and more frequently if required to handle the Recyclable Materials generated at the Premises. The Contractor shall provide Bins or Carts as part of the Collection Service at rates set forth in Exhibit 1, as adjusted. The size of the Bins or Carts and the frequency (above the minimum) of Collection shall be made between the Customer and the Contractor. Size and frequency shall be sufficient to provide that no Recyclable Materials need be placed outside the Bins or Carts, but in no event less than at the ratio of two (2) 96-gallon Carts per twenty-five (25) MFDs at a Multi-Family Residential Complex.

Contractor shall allow MFD Customers to use Bins or Carts for Recyclable Materials Collection that are shared by the Occupants of the Premises. Contractor shall provide one or more Bins or Carts to such Customers as requested by Customer, provided that capacity shall be sufficient to provide that no Recyclable Materials need be placed outside the Bins or Carts. City shall make final determination as to the number and size of Bins and Carts, and frequency of Collection to be provided to shared Customers.

Contractor shall give special consideration when determining the collection location for Multi-Family Residential Complexes to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The designated collection location, if disputed by Customer or Contractor, shall be determined by the City. Additionally, if in the City's opinion the location of an existing collection location is inappropriate, City may require the Customer or Contractor to relocate the Collection Containers.

Contractor shall provide special services such as Roll-out Service, or Scout Service or use of locking Containers when requested by the Customer, at the rate set forth in

Exhibit 1, as adjusted. Contractor may provide customized Containers at the request of the Customer, including Containers of a size not typically provided, where the request can reasonably be accommodated, at the rate agreed to with the Customer, with any disputes as to the rate resolved by the Contract Administrator.

#### **4.03.3 Commercial Premises Recycling Collection**

Contractor shall collect Commingled or Source Separated Recyclable Materials from Commercial Premises as frequently as scheduled by Customer, but not less than once per week and more frequently if required to handle the Recyclable Materials generated at the Premises where the Containers are located. The Contractor shall provide Containers as part of the Collection Service at Rates set forth in Exhibit 1, as adjusted. The size of the Bins, Carts or Roll-off Box and the frequency (above the minimum) of Collection shall be made between the Customer and the Contractor. Size and frequency shall be sufficient to provide that no Recyclable Materials need be placed outside the selected Containers. Contractor will also provide the use of Split Bins for Customers that have limited space, in order to maximize participation in the Recyclable Materials Collection program.

Contractor shall provide special services such as Roll-out Service, or Scout Service or use of locking Containers when requested by the Customer, at the rate set forth in Exhibit 1, as adjusted. Contractor may provide customized Containers at the request of the Customer, including Containers of a size not typically provided, where the request can reasonably be accommodated, at the rate agreed to with the Customer, with any disputes as to the Rate resolved by the Contract Administrator.

#### **4.03.4 Marketing and Sale of Recyclable Materials**

Contractor shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Contract. Contractor may retain revenue from the sale of Recyclable Materials.

#### **4.03.5 Compliance with Mandatory Commercial and Multi-Family Recycling Legislation**

Contractor shall use reasonable good faith efforts to assist City for ensuring that businesses generating more than 4 cubic yards of commercial solid waste per week and multifamily residential dwelling complexes of 5 or more units arrange for recycling services, on or after July 1, 2012. This provision is the result of the State passing Assembly Bill 341, which mandates commercial and multifamily residential complexes implement commercial recycling programs on or after July 1, 2012. Reasonable good faith efforts shall include contacting all applicable commercial and multi-family Customers that do not have recycling services within the first twelve (12) months of the start of the Contract and attempting to arrange for recycling services. By December 31, 2012, the Contractor will provide a written report to the Contract Administrator identifying all applicable commercial and multi-family Customers that have not subscribed for recycling services, the efforts undertaken by the Contractor to arrange for recycling services and the name, title and phone number of the applicable contact person for each Customer.

#### **4.04 GREEN WASTE RECYCLING COLLECTION**

##### **4.04.1 Single-Family Dwelling (SFD) Green Waste Collection**

On or before July 1, 2012, Green Waste Cart deliveries shall be completed and Contractor shall collect and remove Green Waste Materials from all SFDs once per week from Contractor-provided Green Waste Carts. Per Section 6.06.1, Customers may select the desired Cart size in advance of the initial Green Waste Cart delivery. In addition, within ninety (90) days following the initial Green Waste Cart delivery, Customers may receive one (1) free Green Waste Cart exchange for a different-sized Cart. Thereafter, Customers are entitled to one (1) free Green Waste Cart replacement during the Term. Customers may request up to two (2) additional Green Waste Carts of the same size at no additional charge. Delivery of additional Green Waste Carts beyond three (3) will be at the rate set forth in Exhibit 1, as adjusted. No discounts will be given for using 64- gallon or 35 – gallon Green Waste Carts.

Contractor shall collect Carts curbside.

##### **4.04.2 Multi-Family and Commercial Premises Green Waste Collection**

Multi-Family and Commercial Customers shall have the option of voluntarily subscribing to Green Waste Collection Services and shall pay Contractor for such service in accordance with the rates set forth in Exhibit 1, as adjusted. Contractor shall collect Source-Separated Green Waste from Multi-Family Residential Complexes and Commercial Premises that have subscribed to Green Waste Collection Service as frequently as scheduled by Customer, but not less than once per week. Contractor shall allow Multi-Family and Commercial Customers to select a Collection Service method that best suits the needs of its Premises. Specifically, the Contractor shall offer the Containers and service choices that are similar to that offered for Commercial Solid Waste Collection pursuant to Section 4.02.3. Contractor shall collect Green Waste at the location agreed upon by Contractor and Customer. The designated collection location, if disputed by Customer or Contractor, shall be determined by the City. Where Green Waste Collected from Commercial Premises requires special handling due the composition of material or the amount of contamination, Contractor may charge a special collection surcharge in an amount agreed to with the Customer, with any disputes as to the amount resolved by the Contract Administrator.

##### **4.04.3 Annual Holiday Tree Recycling Collection**

Annually, commencing the day after December 25 and three (3) weeks thereafter, the Contractor shall collect holiday trees from SFDs. SFD Customers are required to place the holiday trees curbside on the scheduled Collection day for Solid Waste. Holiday trees must be cut into lengths no longer than four (4) feet, be free of ornaments, garlands, tinsel and flocking, and stands must be removed. Holiday trees from MFDs will be collected on Customer's normal collection days at a central location designated by the Customer at the Multi-Family Premises.

Contractor shall not be required to collect holiday trees that cannot be recycled or composted, due to, among other things, tinsel, flocking or ornaments.

Contractor shall deliver the collected holiday trees to a city approved facility for processing. This annual service shall be provided at no additional charge.

## **4.05 ON-CALL BULKY WASTE COLLECTION SERVICE**

### **4.05.1 SFD and MFD On-Call Bulky Waste Collection**

The Contractor shall provide Bulky Waste Collection Service to all SFD Customers and those Customers residing in MFD with Cart or Bin services in the Service Area whose Bulky Waste have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by the Contractor and Customer, that will provide safe and efficient accessibility to the Contractor's Collection crew and vehicle.

Customers are required to call in to schedule a Bulky Waste pick-up by 5:00 PM the day prior to the Customer's regular Collection day. Customer may place up to five (5) items out for collection per pick-up. Each SFD Customer and those Customers residing in MFD homes, regardless of whether they receive Cart or Bin service, is entitled to three (3) pick-ups per dwelling per Contract Year at no charge. Service at no charge does not extend to the management of MFD as they are subject to the rate set forth in Exhibit 1 as described in Section 4.05.2. Additional Bulky Waste pickups will be charged at the rate set forth in Exhibit 1, as adjusted.

### **4.05.2 Commercial On-Call Bulky Waste Collection**

Contractor shall provide Bulky Waste Pickup service for Commercial Customers at the rate set forth in Exhibit 1, as adjusted.

### **4.05.3 Bulky Waste Collection Restrictions**

The following applies to items collected under this Section:

The following items will not be picked up:

- Hazardous Substances and Hazardous Waste. Effective July 1, 2012, Electronic Waste from SFD's and MFDs shall be collected in accordance with Section 4.06, and not as Bulky Waste.
- Bulky Waste which habitually is placed at any location by importation from outside the City.
- Material exceeding one cubic yard, generated as a result of construction, demolition or remodeling activities.

Vehicles used for collection of Bulky Waste shall not use compactor mechanisms or mechanical handling equipment that may damage reusable goods or release Freon or other gases from pressurized appliances.

### **4.05.4 Bulky Waste Containing Freon**

In the event Contractor collects Bulky Waste that contains Freon, Contractor shall handle such Bulky Waste in conformance to applicable state and federal laws or regulations.

### **4.05.5 Maximum Reuse and Recycling**

Contractor shall dispose of Bulky Waste collected from Customers pursuant to this Contract in accordance with the following hierarchy:

- a. Reuse as is (where energy efficiency is not compromised)
- b. Disassemble for reuse or Recycling
- c. Recycle
- d. Disposal

Contractor shall not landfill such Bulky Waste unless the Bulky Waste cannot be reused or recycled. Contractor shall record by class and weight (in tons) the Solid Waste collected under Section 4.05, and shall record the kinds and weights (in tons) of Solid Waste diverted, if any, from landfilling through Recycling, reuse, or other means of diversion.

#### **4.05.6 City Direction of Bulky Waste**

City reserves the right to direct Contractor to take Bulky Waste collected pursuant to this Section to a designated site or sites for the purpose of permitting persons who will reuse or recycle such Bulky Waste to obtain the Bulky Waste. Contractor shall have no obligation to dispose of the Bulky Waste or Bulky Waste residue remaining at the directed site or sites after re-users and recyclers have removed reusable or recyclable Bulky Waste. Contractor shall be entitled to a rate adjustment to recover any increased costs in accordance with Section 14.07.2.

In addition, Contractor, upon receipt of notice (which may be provided telephonically) from Contract Administrator or Code Enforcement, shall pick up and dispose of Bulky Items left adjacent to public streets, alleys, or other rights of way by no later than 48 hours after notification by the Contract Administrator.

#### **4.06 ON CALL ELECTRONIC WASTE COLLECTION**

Effective July 1, 2012, Contractor shall provide Electronic Waste Collection Service to all SFD and MFD Customers in the Service Area whose Electronic Waste has been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by the Contractor and Customer, that will provide safe and efficient accessibility to the Contractor's Collection crew and vehicle.

Customers are required to call in to schedule an Electronic Waste pick-up by 5:00 PM the day prior to the Customer's regular Collection day.

Customer may place up to five (5) items out for collection per pick-up. SFD and MFD Customers are entitled to three (3) pick-ups per dwelling per Contract Year at no additional charge. Additional items may be delivered to the Buy-Back Center. Contractor shall not be required to collect oversized items of Electronic Waste that cannot be handled by one (1) person. However, such items will be accepted at the Buy-Back Center at no charge.

#### **4.07 CELL PHONES AND USED BATTERIES COLLECTION**

Contractor shall provide for curbside collection of Cell Phones and Household Batteries generated by SFD's, commencing with respect to each Customer upon its receipt of a Cart for Collection of Recyclable Materials. The customer will place these items into a sealed clear plastic bag, and place the plastic bag on top of the Recyclable Materials Cart for Collection on the regularly-scheduled Collection day.

#### **4.08 SHARPS WASTE COLLECTION**

Contractor shall provide for Sharps Waste generated by SFDs or MFDs at no charge, at the Buy-Back Center or through a container placed at up to three (3) locations at City facilities designated by the City. Contractor will replace the container at the City facility up to ten (10) times each Contract Year, on an as-needed basis. Contractor shall also make available to Customers a sharps by mail service from a third party provider through its website, at the rate established by the third party provider from time to time.

#### **4.09 BUY-BACK CENTER**

During the term of this Contract, Contractor will operate a Buy-Back Center for receipt of CRV materials (aluminum and bi-metal cans, glass and plastic bottles) at the City transfer station located at 5960 El Camino Real Carlsbad, CA, and which Contractor currently leases. The facility will operate Tuesday through Saturday, 8:00 AM to 4:00 PM, closing between 1:00 PM – 1:40 PM. Contractor will also accept Electronic Waste, Sharps Waste, Cell Phones, and Household Batteries from Residential Customers at the Buy-Back Center at no charge. Should Contractor's lease of the 5960 El Camino Real facility terminate, Contractor's obligation to operate a Buy-Back Center shall also terminate.

#### **4.10 CITY-SPONSORED EVENTS**

Contractor shall provide Bins, or Roll-off Boxes for Solid Waste and Recycling Collection at City-sponsored projects, cleanups or special events at no additional charge each Contract Year for the term of the contract. City-sponsored events include temporary, unscheduled service to City facilities, City property or public streets and sidewalks, excluding City construction, demolition and renovation projects and materials that require special disposal or handling. Contractor shall not be required to collect Exempt Waste.

#### **4.11 WASTE WATCH**

Contractor's drivers will assist the Carlsbad Police Department by reporting any suspicious activity.

#### **4.12 ANNUAL PHARMACEUTICAL COLLECTION EVENTS**

Contractor shall provide up to two (2) free Pharmaceutical Collection Events per year, including the staffing, disposal and transportation of Pharmaceutical Waste as requested by the Contract Administrator. The City will provide the location for the event(s). Notwithstanding any provision herein to the contrary, due to current uncertainty regarding applicable requirements, the City will not assert any claim of breach against Contractor related to alleged violations of federal, state or local laws and regulations associated with Pharmaceutical Waste Collection. City or Contractor may request a modification of the scope of services related to Pharmaceutical Waste collection, or terminate this program, where prohibited or rendered impractical by current or future federal, state or local laws and regulations.

#### **4.13 ANNUAL SHREDDING EVENT**

For Residential Service Customers, Contractor shall provide at least one annual shredding event free of charge. Contractor may require proof of residency at such events. The location of the event shall be within the City of Carlsbad. The limit of shredded material accepted will be three standard office storage boxes per Residential Premises. Where appropriate, this limit may be waived by Contractor on a case by case basis.

#### **4.14 CARLSBAD JAZZ IN THE PARKS EVENTS**

Contractor shall provide solid waste and recycling bins and service as needed during the Carlsbad Jazz in the Park events. Signage for recycling receptacles within the audience area will be provided to promote recycling.

### **ARTICLE 5. TRANSPORTATION OF SOLID WASTE**

Contractor shall transport all Solid Waste collected and intended for disposal to the Palomar Transfer Station. City may change the designated facility by providing notice in writing to

Contractor in which event Contractor is entitled to a rate adjustment in accordance with Section 14.07.2.

Contractor shall maintain accurate records of the quantities of Solid Waste transported to the Palomar Transfer Station, or other facility designated in writing by the City and will cooperate with City in any audits or investigations of such quantities.

Contractor shall cooperate with the operator of the Palomar Transfer Station, or other facility designated in writing by the City, with regard to operations therein, including, for example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, cooperating with its Hazardous Waste exclusion program, and so forth.

#### **5.01 GREEN WASTE PROCESSING SERVICES**

Contractor shall deliver all Collected Green Waste to a fully permitted Green Waste Processing Facility or Green Waste transfer station. The City has directed that Green Waste Collected in the City be transported to the Palomar Transfer Station.

Should the City direct that Green Waste be transported to a location other than the Palomar Transfer Station, Contractor shall be entitled to a rate adjustment in accordance with Section 14.07.2.

#### **5.02 MINIMUM RECYCLING REQUIREMENTS**

Contractor shall recycle or divert from landfilling sufficient Solid Waste to ensure that the City meets current state law requirements for diversion Citywide. For Contract Year 2012, Contractor shall be considered to have met this requirement under this Contract if the City's annual report to CalRecycle shows a greater than 50% diversion rate and if CalRecycle approves the City's reports as having a greater than 50% diversion rate in connection with efforts to meet City's diversion mandate. In determining compliance with state law, the City and Contractor agree to cooperate in good faith to develop representative per capita disposal calculations based on population, level of industry employment, or a combination of both (e.g. hotels, assisted living facilities), as appropriate.

Beginning with Contract Year 2013, if the annual report the City submits to CalRecycle reflects a diversion rate of less than 50%, or if such a report is later revised to reflect a rate less than 50%, the Contractor shall be required to undertake the actions set forth in Section 5.03. If a report is revised and approved by CalRecycle to reflect 50% or higher diversion, Contractor's obligations under Section 5.03 shall no longer be applicable.

If the State increases waste diversion requirements, or the City increases waste diversion requirements, Contractor shall be entitled to a rate adjustment in accordance with Section 14.07.1 for the additional waste diversion requirements services that may be required, and the provisions of this Section will apply using the higher diversion rate.

Contractor acknowledges the City's non-binding goal of achieving 75% waste diversion, and agrees to undertake good faith efforts to identify new or enhanced strategies or programs to increase waste diversion to assist the City to meet this goal. Contractor shall report the results of its efforts annually to the City as part its annual report, in accordance with Section 10.03.3.

### **5.03 FAILURE TO MEET MINIMUM REQUIREMENTS**

Upon Contractor's failure to meet the minimum waste diversion requirements set forth above in Section 5.02, and if the City determines that the Contractor has not met waste diversion from the services and programs contemplated under this Contract, the Contractor agrees to implement programs and provide equipment necessary in order for the City to meet the State-mandated 50% diversion requirement. Such programs and equipment may include additional public education efforts, on-site business waste audits, additional Recycling Carts or Bins at multi-family complexes, high grading of commercial loads, secondary processing of commercial solid waste, and processing of Construction and Demolition Waste from Roll-Off Boxes. Should additional programs be required beyond those contemplated under this Contract, the Contractor shall be entitled to an adjustment in rates in accordance with Section 14.07.2.

### **5.04 OWNERSHIP OF SOLID WASTE**

City and Contractor understand and agree that it is Contractor, and not City, who will arrange to collect Solid Waste, that City has not, and, by this Contract does not, instruct Contractor on its Collection methods, nor supervise the Collection process; nor do the City or Contractor intend to place title to Solid Waste collected by Contractor in City. Rather, the City and Contractor intend that whatever, if any, title in and to the Solid Waste that is collected by Contractor which otherwise might exist in or with City in the absence of this Contract is hereby transferred to Contractor; and further that if Contractor gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Contract. At no time does City obtain any right of ownership or possession of Solid Waste or Recyclable Materials placed for Collection, and nothing in this Contract shall be construed as giving rise to any inference that City has any such rights. Title and ownership of Solid Waste shall transfer from Contractor to the owner or operator of the Palomar Transfer Station, or any other designated facility, MRF, green waste processing facility, or other processing facility, upon delivery. City and Contractor agree that, for the purposes of the Uniform Commercial Code and all other laws imposing liability for defective products, it is Contractor, and not City which is to be considered the merchant of goods recycled pursuant to this Contract. Contractor shall have the right to retain, Recycle, process, dispose of, and otherwise use Solid Waste collected pursuant to the terms hereof in any lawful fashion or for any lawful purpose; and, further, shall have the right to retain any benefit resulting from its right to retain, Recycle, process, dispose of, or reuse the Solid Waste which it collects.

## **ARTICLE 6. OTHER SERVICES**

### **6.01 RESPONSIBILITY FOR SERVICE BILLING AND COLLECTION**

The City shall be responsible for billing and collection of payments from all Residential Customers that receive a City of Carlsbad utility bill, and receive scheduled, permanent Collection Service. The Contractor shall be responsible for the billing and collection of payments from all other Customers, as well as billing and collection of payments for ancillary services to Residential Customers (e.g, extra carts).

City and Contractor shall use their best efforts to obtain prompt and complete payment of all delinquent accounts by any remedy authorized by law. Contractor shall print notices on bills or insert information in the bills at City's request. Within 30 days written notice, City may elect to have either City or Contractor bill all customers, as a change in service. Bills must be itemized by type of service. All bills must carry a due date, not "due upon receipt." To start service, new Customers billed by the City will pay a pro-rated amount in advance for the balance of the billing period.



## **6.02 CITY BILLING**

### **6.02.1 Establishment of Service/Billing Baseline**

The City shall compensate Contractor monthly for services where the City provides for billing and collection of payments, in a total amount based on the per-Premises or per-Service charges set forth in Exhibit 1, as adjusted. Between the Effective Date and the commencement date, the Parties agree to meet and confer to identify each Customer billed by the City, the level of service and the applicable Rate.

### **6.02.2 Contractor Submittal of Billing Information**

Contractor agrees to use reasonable efforts to provide City with any changes in cart sizes that will impact the rate to the customer, by the 30<sup>th</sup> of each month, related to one (1) or more prior calendar months. This information will be incorporated into the next invoice submitted by City to City-billed Customers.

### **6.02.3 Administration Fee**

City shall retain \$0.12 per bill that is sent out each month. The Contractor shall be entitled to a rate adjustment in accordance with Section 14.07.2 should the Administration fee be increased.

### **6.02.4 Other Fees**

City shall retain the Franchise Fee, AB 939 Fee and Storm Water Fee as described in sections 8.02, 8.03, and 8.04.

### **6.02.5 Payment to Contractor**

City will pay Contractor all amounts owing by the 30<sup>th</sup> day of the month following the submittal of information under Section 6.02.2, with respect to that month.

### **6.02.6 Annual Reconciliation of City-Billed Customers**

Prior to December 31, 2012, and each December 31 thereafter, the Customers billed by the City, for which the Contractor shall be compensated by the City, shall be determined as follows:

- A. Not later than September 30 of each year, the City shall provide to the Contractor a listing of the total number of Customers billed by the City, by Customer location and level of service.
- B. Contractor shall have 30 days to review the documentation supplied by the City.
- C. Contractor shall inform the Contract Administrator in writing not later than five (5) days following the end of the thirty (30) day review period of any disagreement with the documentation supplied by the City. Failure to so inform the Contract Administrator shall constitute acceptance of the documentation supplied by the City.
- D. Contractor and the Contract Administrator shall meet and confer, and agree to cooperate in good faith to resolve any disagreements. If Contractor and the Contract Administrator are unable to agree upon the Customers billed by the City and the level of service within 10 days after receipt from the Contractor of the notice of disagreement, the City Manager shall resolve the disagreement, and his/her determination shall be considered final.

### **6.03 CONTRACTOR BILLING**

Contractor shall invoice all Commercial Customers receiving scheduled, permanent service on a monthly basis in arrears at the rates set forth in Exhibit 1, as adjusted. Residential Customers billed by Contractor shall be invoiced bi-monthly in advance at the rates set forth in Exhibit 1, as adjusted. Bills must be itemized by type of service. All bills must carry a due date, but may be "due upon receipt" where a date certain is provided before which the remedies provided in Section 6.05.4 will apply. In addition, Contractor shall invoice Customers receiving temporary Bin or Roll-off service in arrears upon the completion of service, as provided in Exhibit 1, as adjusted. Contractor will accept major credit cards for payment of these services. Customers who do not use credit cards may be required to post a security deposit or to pay on a "Cash on Delivery" (C.O.D.) basis.

### **6.04 BILLING SERVICE REQUIREMENTS**

#### **6.04.1 Records**

Contractor shall maintain, for inspection by the City, copies of all billings, receipts, and service information, in chronological order, for a period of three (3) years after the date of service. Contractor shall maintain those records in electronic format. City staff or representatives shall be given access to such records upon one (1) Work Day notice.

#### **6.04.2 Rates**

City shall establish, by resolution, maximum rates for the types of service provided as described in Exhibit 1, as adjusted. Contractor shall bill and collect at rates that do not exceed the maximum rates set by the City Council. Where a rate for a particular service is not established in Exhibit 1, Contractor and Customer shall negotiate directly with respect to the rate, with any disputes resolved by the Contract Administrator, whose decision shall be final.

#### **6.04.3 Partial Month Service**

If, during a month, service to Customer is added to or deleted, the Billing shall be pro-rated based on the weekly service rate (weekly service rate shall be the monthly service rate divided by four (4) times the number of actual weeks in the month that service was provided to the Customer).

#### **6.04.4 Temporary Service Stop**

Residential Customers may request a temporary service stop and will not be charged for Collection Services during the temporary service stop if such service is stopped for a minimum of one continuous month due to extended vacation, home remodeling/home construction. Temporary service stops expire automatically within one month after which Contractor shall automatically resume service to the prior established service level unless Customer requests an additional temporary service stop. Contractor shall resume service to the prior established service level within five (5) days' notice of a request by the Residential Customer to resume service.

#### **6.04.5 Delinquent Service Accounts**

Contractor shall diligently pursue collection of delinquent accounts billed by Contractor by every means reasonably available to Contractor, including delinquency letters, telephone calls, employment of collection agencies, and small claims court.

Once payment is thirty (30) days past due, Contractor may send to the Customer a notice that service will be suspended if payment is not made within an additional 30 days. Contractor may also charge late fees, interest, or NSF fees once payment is thirty (30) days past due. However, service may only be suspended after these minimum time periods and notice. City will not be responsible for or assist with the collection of delinquent accounts billed by Contractor. Contractor shall notify City Code Enforcement of suspended service. Upon recommencement of service following suspension, MFD and Commercial Customers shall be charged a Re-start Fee at the rate set forth in Exhibit 1, as adjusted.

## **6.05 CUSTOMER SERVICE**

### **6.05.1 General**

All service inquiries and complaints shall be directed to the Contractor. A representative of the Contractor shall be available to receive the complaints during normal business hours, as defined in Section 6.05.2. All service complaints will be handled by the Contractor in a prompt and efficient manner. In the case of a dispute between the Contractor and a Customer, the matter will be reviewed and a decision made by the Contract Administrator.

- A. Complaints related to missed Collections shall be addressed as provided in Sections 7.03.3 and 7.03.4. For those complaints related to repair or replacement of carts or bins, Section 7.06.1 shall apply.
- B. Contractor agrees that it is in the best interest of the City that all Solid Waste, Recyclable Materials and Green Waste be collected on the scheduled collection day. Accordingly, missed collections will normally be collected as set forth above regardless of the reason that the collection was missed. In the event a Customer requests missed Collection Service more than two (2) times in any consecutive two (2) month period, the Contract Administrator will work with the Contractor to determine an appropriate resolution to that situation. In the event the Contractor believes any complaint to be without merit, Contractor shall notify the Contract Administrator, either by e-mail, telephone, or written notice. The Contract Administrator will investigate all disputed complaints and render a decision.
- C. Contractor's service telephone number shall be accessible by a local (Carlsbad) telephone number. The telephone number(s) shall be listed in the area's telephone directories under the Contractor's name in the White Pages. Contractor shall also provide a toll-free number.

### **6.05.2 Contractor's Office**

The Contractor shall maintain an office within the City of Carlsbad, or at another location approved by the City, where complaints can be received. Such office shall be equipped with sufficient telephones to meet the requirements of Section 6.05.7, shall have responsible persons in charge during Collection hours, and shall be open during such normal business hours, 8:00 a.m. to 5:00 p.m. Monday through Friday. The Contractor shall provide either a local or toll-free telephone number, and a telephone answering service or mechanical device to receive Customer inquiries during those times when the office is closed. Calls received after normal business hours shall be addressed the next Work Day morning.

### **6.05.3 Complaint Documentation**

Service complaints received by City shall be directed to Contractor. Contractor shall keep logs of complaints forwarded to it for a minimum of three (3) years, which can be maintained electronically.

Contractor shall log all complaints received, including the date and time the complaint was received, the name, address and telephone number of the caller/complainant, a description of the complaint, the name of the employee recording the complaint and the action taken by Contractor to respond to and remedy the complaint. Log shall also include each instance that Solid Waste and/or Recyclables are not collected and the form of notification used to inform the participants of the reasons of non-collection and the end result or means of resolution of the incident.

All written Customer complaints and inquiries shall be date-stamped when received. All oral Customer complaints shall be recorded in a logbook. Receipt of all complaints, both written and oral shall be acknowledged to Customer within one (1) Work Day of receipt. Contractor shall use best efforts to resolve complaints within two (2) Work Days. Contractor shall log action taken by Contractor to respond to and remedy the complaint.

All Customer service records and logs kept by Contractor shall be available to City upon request. City shall, at any time during regular office hours, have access to Contractor's customer service department for purposes that may include monitoring the quality of customer service or researching Customer complaints.

### **6.05.4 Resolution of Customer Complaints**

Should Contractor and Customers not be able to resolve a complaint, not be able to establish a mutually acceptable rate to be charged for services not included in Exhibit 1, or otherwise disagree, the matter shall be determined by the Utilities Director, whose decision shall be final.

Intervention by City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Contractor. Nothing in this section is intended to affect the remedies of third parties against Contractor.

### **6.05.5 Emergency Contact**

The Contractor shall provide the Contract Administrator with an emergency phone number where the Contractor can be reached outside of the required office hours. A live person, not voice-mail, shall be available at that number at all times, twenty-four (24) hours per day.

### **6.05.6 Multilingual/TDD Service**

Contractor shall at all times maintain the capability of responding to telephone calls in English and such other languages as City may direct. Contractor shall at all times maintain the capability of responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services. Contractor shall be entitled to a rate adjustment to recover increased costs in the event that City directs that telephone service be provided in more than English and Spanish.

### **6.05.7 Customer Calls**

During normal business hours, as identified in Section 6.05.2, Contractor shall maintain a telephone answering system capable of accepting at least fifteen (15) incoming calls at

one time. Contractor shall record all calls including any inquiries, service requests and complaints into a customer service log. All incoming calls will be answered within five (5) rings. Any call "on-hold" in excess of 1.5 minutes shall have the option to remain "on-hold" or to be switched to a message center where Customer can leave a message. Contractor's customer service representative shall return Customer calls. For all messages left before 3:00 p.m., all "call backs" shall be attempted a minimum of one time prior to 6:00 p.m. on the day of the call. For messages left after 3:00 p.m., all "call backs" shall be attempted a minimum of one time prior to noon the next Work Day. Contractor shall make a minimum of three (3) attempts within twenty-four (24) hours of the receipt of the call. If Contractor is unable to reach the Customer on the next Work Day, Contractor shall leave a voice message, and if no voice recording is available shall send a postcard to the Customer on the second Work Day after the call was received.

#### **6.05.8 Contract Liaison**

Contractor shall designate in writing a "Contract Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Contract-related issues. The Contractor must respond to all inquiries from the City within one (1) Work Day from the time of the inquiry. City shall be notified in advance of any change in Contract Liaison.

#### **6.05.9 Service Liaison**

Contractor shall designate in writing a field supervisor as "Service Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer Service-related complaints. City shall be notified in advance of any change in Service Liaison.

#### **6.05.10 Payments and Refunds**

Should an audit disclose that payments payable by the Contractor were underpaid or that Customers were overcharged for the period under review, Contractor shall pay to City any underpayment of payments in accordance with Section 8.06 and/or refund to Contractor's Customers or to City, as directed by City, any overcharges within thirty (30) days following the date of the audit. Contractor shall pay interest to the City or Customer, as directed by City for any overcharge at an annual rate of ten percent (10%). Undercharges shall not be billed in arrears for more than ninety (90) days of service, with any remaining undercharges absorbed by Contractor. Overpayments to City shall be addressed as provided in Section 8.06.

### **6.06 PUBLIC OUTREACH AND EDUCATION SERVICES**

Contractor, at their own expense, shall prepare, submit and implement an annual (Rate Year) Public Education and Outreach Program. The proposed action plan must be submitted annually for City approval prior to the commencement date for the first Rate Year and thereafter no later than each September 30 for each subsequent Rate Year. The program may include up to four campaigns per Contract Year at the City's discretion, designed to increase diversion and recycling program participation. Campaigns may target certain Recyclable Materials or "problem" areas of the Service Area where improvements can be maximized, such as Green Waste, Holiday Tree and Bulky Waste pick-ups, or recycling best practices for specific groups such as commercial businesses or multi-family residential complexes. Campaigns may include billing inserts, newspaper and/or magazine articles, newspaper and/or magazine advertisements, or other outreach methods. Targets of outreach should be based on local trends and recycling patterns based on information obtained by both the Contract Administrator and Contractor staff.

#### **6.06.1 Implementation and Ongoing Education Services**

In order to promote public education, in addition to any other materials it develops, Contractor shall create the following public education materials and programs at its expense, which will be distributed as indicated below. All brochures, mailings, and other educational materials are to be approved by Contract Administrator in advance of distribution.

**Initial Mailing/Cart Options** – Contractor will prepare and mail an initial information packet to all Customers explaining the transition from the existing Solid Waste Handling Service program to the new program as defined by this Contract. The mailing will provide information on the upcoming automation of Collection, the planned process for cart distribution, and available cart sizes to assist residents in the selection of carts. The mailing will also describe any program changes, route changes, dates of program implementation, Recycling and diversion programs available, and other pertinent information.

As part of the transition to Cart collection service for SFD, on or before April 1, 2012 Contractor will provide a notice to each SFD of the transition to Cart service, offer SFD's the choice of a 96-gallon, 64-gallon or 35-gallon for each type of service (Solid Waste, Recycling and Green Waste). And indicate the rate for service for each cart size. The notice will also disclose any requirements governing 35-gallon Cart Service, such as the provisions related to chronic overfilling. In addition, Contractor shall contact targeted groups of SFD's to determine their interest in 35-gallon Cart services, such as HOA's and mobile home parks. If no response is received, or no preferred Cart sizes are selected, the Customer will receive 96-gallon Carts for Solid Waste, Recycling and Green Waste. Delivery of the Carts will commence beginning on or after May 1, 2012. On or before July 1, 2012, Cart deliveries shall be completed.

The initial information packet shall be mailed no later than 45 days prior to the commencement of automated cart distribution and include a postage paid postcard for residents to select the desired cart sizes for Solid Waste Carts, Recycling Carts and Green Waste Carts.

Contractor shall notify Cart Customers of the upcoming automation of Collection, and the distribution of Carts.

**Instructional "How-to" Packets** – An information packet shall be provided to each Customer at the start of service under this Contract and to each new Customer throughout the Contract term. Contractor may attach these packets to the Carts upon initial Cart distribution. This packet shall: describe available services, including available Recycling and diversion programs; provide instructions for proper use of the Carts and Bins provided (such as how to place Carts or other permitted items for collection, the types of materials to be placed in each Cart); detail annual shred event; detail On-Call Bulky Waste Collection Service; detail holiday collection schedules; and provide billing and customer service telephone numbers. This packet will contain updated information on how to use Containers, when, where and how to place Solid Waste for Collection, and who to contact with service or billing questions, and for Bulky Item Collection. The packet should also clearly indicate what materials, such as Exempt Waste, Biohazardous Waste, and other Household Hazardous Wastes (HHW), should not be

disposed of in these Containers. This brochure shall include instructions on how Customers should dispose of HHW.

- A. Container Labels and Hot Stamps – Recycling and Green Waste Containers shall carry stickers/labels and hot stamps as described in Section 7.06.1.
- B. Corrective Action Notice – Contractor shall develop a corrective action notification form for use in instances where a Customer sets out inappropriate materials for Collection that explains the appropriate manner for Disposal of such items.
- C. Website – Contractor shall develop and maintain a website with a page specific to the City that includes holiday schedules, proper HHW disposal procedures, events such as annual shred event and pharmaceutical collection, identification of materials to be placed in Recycling Containers, Contractor's address, email address and phone number, a link to the City's website, and other useful information.

#### **6.06.2 Contractor Representative**

Contractor shall retain on its staff an individual who shall, as part of his or her job function, routinely visit civic groups, school assemblies, homeowners' associations, multi-family complexes and businesses, to promote and explain the Recycling and other programs Contractor offers, and participate in demonstrations and civic events.

#### **6.06.3 Community Events**

At the direction of the Contract Administrator, Contractor shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost, educational and publicity information promoting the goals of City's Solid Waste program.

#### **6.06.4 Commercial Waste Audits**

Contractor will offer to perform waste audits to Commercial Customers, focusing on those large businesses with the greatest opportunity to increase diversion. Contractor shall accommodate all requests for audits in a timely manner in order to attempt to audit 10 to 20 percent of large businesses annually. Contractor will also offer mini-audits conducted by route managers to medium and small sized businesses.

#### **6.06.5 Green Business Program**

Contractor shall work to increase Commercial participation in the Recyclable Materials Collection program through the Green Business Program. Contractor will identify businesses that are leading the way through exemplary recycling best practices and/or results and recognize a Green Business of the quarter. Contractor shall issue media press releases, newspaper ads, promotions on the Contractor's website, recognition in the Contractors Perspectives E-newsletter and/or recognition of the Green Business at Council Meetings. Contractor will also provide a plaque for the Green Business of each quarter.

### **6.07 WASTE GENERATION/CHARACTERIZATION STUDIES**

Contractor acknowledges that City must perform solid waste generation and disposal characterization studies periodically to comply with the requirements of the Act. Contractor agrees to participate and cooperate with City and its agents and to accomplish studies and data

collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste collected and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed, by Customer type (SFD, MFD, Commercial), to satisfy the requirements of the Act. Contractor will at its sole expense conduct such a waste generation and characterization study upon request of City, but not more than once every two years.

#### **6.08 EMERGENCY SERVICES**

In the event of a tornado, major storm, earthquake, tsunami, fire, natural disaster, or other such event, the Contract Administrator may grant the Contractor a variance from regular routes and schedules. As soon as practicable after such event, the Contractor shall advise the Contract Administrator when it is anticipated that normal routes and schedules can be resumed. The Contract Administrator shall make an effort through the local news media to inform the public when regular services may be resumed. The clean-up from some events may require that the Contractor hire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the event. The Contractor shall receive additional compensation, above the normal compensation contained in this Contract, to cover the costs of rental equipment, additional personnel, overtime hours and other documented expenses based on the rates set forth in Exhibit 1, as adjusted to this Contract provided the Contractor has first secured written authorization and approval from the City through the Contract Administrator.

### **ARTICLE 7. REQUIREMENTS FOR OPERATIONS, EQUIPMENT, AND PERSONNEL**

#### **7.01 COLLECTION HOURS AND SCHEDULES**

##### **7.01.1 Day and Time of Collection**

To preserve peace and quiet, no solid waste may be collected between 8:00 P.M. and 5:00 A.M. in Commercial Zones, or otherwise between 8:00 P.M. and 6:00 A.M. Contractor must adjust the early morning start point of collection routes to address and minimize service complaints when warranted and as practicable. However, the Contract Administrator may waive this requirement when necessitated by conditions beyond the control of the Contractor. The Contract Administrator may require the Contractor to change hours of operations in Residential or Commercial areas if disruption occurs.

##### **7.01.2 Holiday Service**

The City observes New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day as legal holidays. Contractor shall not be required to provide Collection Services or maintain office hours on the City observed holidays. In any week in which one of these holidays falls on a Work Day, Residential Collection Services for the holiday and each Work Day thereafter will be delayed one Work Day for the remainder of the week with normally scheduled Friday Residential Collection Services being performed on Saturday. Any changes to the Holiday Service collection schedule may only be approved by the City.

#### **7.02 COLLECTION ROUTES**

On or before fifteen (15) work days following the Effective Date, the Contractor shall provide for City approval maps precisely defining Collection routes, together with the days and the times at which Collection shall regularly commence. If the City has not approved or requested changes within fifteen (15) Work Days upon receipt of the service route maps, they shall be deemed as approved.



#### **7.02.1 Collection Routes Changes**

The Contractor shall submit to the City, in writing, any proposed route change (including maps thereof) not less than sixty (60) days prior to the proposed date of implementation. The Contractor shall not implement any route changes without the prior review and approval of the Contract Administrator. The Contractor shall notify those Customers in writing of route changes not less than thirty (30) days before the proposed date of implementation. The Contractor shall be responsible for all costs associated with the changing of the street sweeping routes related to changes in the solid waste Collection routes.

#### **7.02.2 Collection Route Audits**

The City reserves the right to conduct audits of Contractor's collection routes. The Contractor shall cooperate with the City in connection therewith, including permitting City employees or agents, designated by the Contract Administrator, to ride in the Collection vehicles in order to conduct the audits. The Contractor shall have no responsibility or liability for the salary, wages, benefits or worker compensation claims of any person designated by the Contract Administrator to conduct such audits.

The scope of the audit, and auditing party, will be determined by City and the scope may include, but is not limited to, Customer Service levels and Billing, Contractor Payments to City, Gross Receipts, tonnage, and verification of diversion rate.

If inaccuracies are found, City may expand the scope of the audit and recover additional audit costs from the Contractor.

### **7.03 COLLECTION STANDARDS**

#### **7.03.1 Implementation of Service**

The Contractor's implementation of the services required under this Contract, commencing on July 1, 2012 shall occur in a smooth and seamless manner so that Customers do not experience disruption in Collection Services when services are initiated.

#### **7.03.2 Servicing Containers**

Contractor shall Collect the contents and return each Container to the location where the Occupant properly placed the Container for collection. Contractor shall use due care when handling Containers. Contractor shall not throw, roughly handle, damage, or break Containers.

#### **7.03.3 Missed Pick-Ups – SFD**

When notified of a SFD missed pick-up prior to 12:00 noon on a Work Day, Contractor shall collect the Solid Waste, Recyclable Materials, or Green Waste on the Work Day the notice is received. If notified after 12:00 noon on a Work Day, Contractor must collect the Solid Waste, Recyclable Materials, or Green Waste no later than the following Work Day.

#### **7.03.4 Missed Pick-Ups – MFD & Commercial**

When notified of a MFD or Commercial missed pick-up prior to 12:00 noon on a Work Day, the Contractor must collect the Solid Waste, Recyclable Materials, or Green Waste on the Work Day the notice is received, except in cases where access to containers is blocked on the Customer's property. If notified after 12:00 noon on a Work Day,

Contractor must collect the Solid Waste, Recyclable Materials, or Green Waste no later than the following Work Day, except in cases where access to containers is blocked on the Customer's property.

#### **7.03.5 New Customer and Change in Service Levels**

Contractor shall deliver Containers and initiate Collection services for a new Customer within five (5) Work Days of the Customer's request for service. If an existing Customer requests a change in the number or size of the Solid Waste, Recyclable Materials, or Green Waste Containers and/or frequency of Collection, the Contractor shall deliver additional Containers and/or remove Containers and shall initiate changes in the Collection Services within five (5) Work Days of the Customer's request for a change in service.

#### **7.03.6 No Commingling of Solid Waste**

Contractor shall separately collect and segregate Solid Waste, Recyclable Materials, and Green Waste from each other and shall not commingle these materials at any time without the express prior written authorization of the Contract Administrator.

#### **7.03.7 Conditions of Service**

Contractor shall collect all Solid Waste, Recycling, or Green Waste Bins or Carts that are readily accessible to the Contractor's crew and vehicles and not blocked, where the Carts have been placed curbside or other such location agreed to by the Contractor and Customer that will provide safe and efficient accessibility to the Contractor's Collection crew and vehicle.

Contractor shall not be required to service the following:

- Containers with Recyclable Materials that have not been segregated from Solid Waste and Green Waste. As an alternative, at the direction of the Customer, Contractor may collect this material, and may charge a Contamination Fee to MFD Customers or Commercial Customers.
- Containers with Green Waste that has not been segregated from Solid Waste and Recyclable Materials. As an alternative, at the direction of the Customer, Contractor may collect this material, and may charge a Contamination Fee to MFD Customers or Commercial Customers.
- Carts that exceed the maximum load limit specified by the Cart manufacturer.
- Any Commercial Solid Waste that is not placed in a Bin unless such Commercial Solid Waste is outside the Solid Waste Bin as a result of overflow.

#### **7.03.8 Set-Out Instructions to Customers**

Contractor shall instruct Customers as to any preparation of Solid Waste, Recyclable Materials, or Green Waste and the proper placement of Containers. If Customers are not adhering to Contractor's instructions, Contractor shall notify such Customers in writing.

#### **7.03.9 Non-Collection**

In cases of failure to comply with the instructions, Contractor may deny Collection Service provided that Contractor leaves a Non-Collection Notice on the Container, as determined by the City, indicating the reason for refusing to Collect the material. Such Notice shall also identify the steps Waste Generator must take to recommence Collection Service.

#### **7.03.10 Non-Collection Notices**

In the event of non-collection, Contractor shall affix to the Container a Non-Collection Notice explaining why Collection was not made. The Non-Collection Notice shall be affixed prominently and securely onto the Container to ensure that it is not inadvertently removed due to weather conditions.

Contractor shall document Non-Collection Notices recording the date and time of issuance, address of Customer, reason for issuance, name of employee who issued the notice, and truck and route numbers. The Non-Collection Notice shall be at least two inches by six inches (2" x 6") in size. The Non-Collection Notice must identify the steps the Waste Generator must take to recommence Collection Service.

Notwithstanding the above, with respect to SFD Customers using a 35-gallon Cart for Solid Waste, Contractor is entitled to deliver an appropriate change in Cart size and adjust the rate accordingly where Non-Collection Notices have been issued for the reasons set forth in Section 7.03.7 (to the extent applicable) on three (3) or more occasions within any consecutive twelve (12) month period.

#### **7.03.11 Bin Overfilling**

Where Contractor identifies instances of Bin overfilling at an MFD Customer, or Commercial Customer, Contractor shall document the overfilling through use of film or digital photography. Contractor will present evidence of the overfilling to both the Contract Administrator and the Customer, along with recommendations for changes in service levels to prevent overfilling, and may charge the Overage Fee and make the final determination of changes to service level. In the event Contractor cannot successfully contact Customer after three attempts, or cannot reach an agreement with Customer regarding a change in service, Contractor shall notify Contract Administrator, by e-mail, of the details of the Solid Waste overfilling, and the attempts at communication with the Customer. In the event that Contractor cannot successfully contact Customer or cannot reach an agreement with Customer regarding a change in service, Contractor may deliver the next larger-sized Bin, or increase the Collection frequency and to adjust the rate in effect for the determined service level if there have been three (3) or more instances of Bin overfilling within any twelve (12) month period with the Contract Administrator's approval.

#### **7.03.12 Care of Private Property**

Contractor's employees shall follow the regular walkway for pedestrians while on private property and shall neither trespass nor cross property to the adjoining premises unless the occupant or owner of both properties has given permission. Care should be taken to prevent damage to property, including flowers, shrubs, and other plantings. Contractor shall repair, to its previous condition, all damage to private or public property caused by its employees.

#### **7.03.13 Spillage and Litter**

The Contractor shall not litter premises and shall exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of Solid Waste. The Contractor shall not be responsible for cleaning up sanitary conditions caused by the carelessness of the Customer; however, the Contractor shall clean up any material or residue that are spilled or scattered by the Contractor or its employees.

Contractor shall immediately, at the time of occurrence, clean up any spilled or dropped Solid Waste. Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the Contractor's operations or equipment repair shall be covered immediately with an absorptive material and removed from the street surface. When necessary, Contractor shall apply a suitable cleaning agent to the street surface to provide adequate cleaning, and shall notify the Contract Administrator, and applicable Hazardous Materials Management Agencies within two (2) hours of such a spill or leak. Contractor shall meet or exceed for National Pollutant Discharge Elimination System (NPDES) permit requirements.

The above paragraphs notwithstanding, Contractor shall clean up any spillage or litter caused by Contractor within two (2) hours upon notice from the City.

#### **7.03.14 Vehicles Equipped with Absorbent, Broom and Shovel**

To facilitate such clean-up, Contractor's vehicles shall at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.

### **7.04 CONTRACTOR FACILITIES**

Contractor shall provide all facilities needed for vehicle parking and maintenance, container storage and maintenance, employee parking, administration, billing, customer service, and other activities required to fulfill its obligations hereunder. Contractor shall own or lease the facilities; secure all permits needed to conduct its operations; design, finance, and complete any site improvements; maintain the facilities; and make any other arrangements necessary to fulfill its obligations required by this Contract.

### **7.05 VEHICLES**

Contractor is responsible for providing all vehicles that may be required for the Collection of Solid Waste that are sufficient in number and capacity to efficiently perform the work required by this Contract in strict accordance with its terms. Contractor is expressly obligated to provide such Collection vehicles and routes as are required to meet the service standards set forth herein. Contractor shall have available on Work Days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

#### **7.05.1 Specifications**

- A. The Collection vehicles shall be designed and operated so as to prevent collected materials from escaping from the vehicles. Hoppers shall be closed on top and on all sides with screening material to prevent collected materials from leaking, blowing or falling from the vehicles. All Collection vehicles and Containers shall be watertight and shall be operated so that liquids do not spill during collection or in transit.
- B. At all times during the term of this Contract, Contractor's Collection Vehicles shall comply with San Diego Air Pollution Control District and the California Air Resource Board's emission standards as they may be approved for Solid Waste Collection vehicles, as well as other Federal, State and local laws and regulations that may be enacted during the term of this Contract. Contractor shall provide Collection Services using alternative clean-air (NG – natural gas) Collection vehicles. Conversion of the Contractor's fleet to NG Collection vehicles shall occur over the first three (3) years of the Contract with 1/3 of Contractor's fleet of vehicles replaced with NG Collection vehicles each year starting with the

first year of this Contract. All Collection vehicles under this Contract, except those vehicles used solely on Contractor's premises, are to be registered with the California Department of Motor Vehicles.

- C. All Collection vehicles must comply with U.S. EPA noise emission regulations, currently codified at 40 CFR Part 205, and other applicable state noise control regulations.
- D. The Contractor's name and the Customer Service telephone number shall be properly displayed on all Collection vehicles.

#### **7.05.2 Vehicle Identification**

Collection vehicles shall be marked with Contractor's name, toll-free number, and the number of the vehicle painted in letters of contrasting color, at least three (3) inches high, on each side and the rear of each vehicle.

#### **7.05.3 Vehicle Cleaning**

All Collection vehicles shall be washed at least once each week. Collection vehicles shall be thoroughly washed and thoroughly steam cleaned on a regular basis so as to present a clean appearance. The Contract Administrator may inspect collection vehicles at any time to determine compliance with this Contract. Contractor agrees to replace or repair to the Contract Administrator's satisfaction, any collection vehicle which Contract Administrator determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

#### **7.05.4 Vehicle Maintenance**

Contractor shall inspect each Collection vehicle daily to ensure that all equipment is operating properly. Collection vehicles, which are not operating properly, shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions upon Collection vehicles in accordance with the manufacturer's specifications and schedule.

Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date, nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.

Contractor shall keep accurate records of all Collection vehicle maintenance and shall make such records available to City upon request. The log shall at all times be accessible to City by physical inspection upon request of Contract Administrator, and shall show, at a minimum, each Collection vehicle's Contractor-assigned identification number, date purchased or initial lease, dates of performance of routine maintenance, dates of performance of any additional maintenance, and description of additional maintenance performed.

#### **7.05.5 Painting**

Contractor shall repaint all Collection vehicles (including vehicle's striping) during the term of this Contract on a frequency as necessary to maintain a positive public image as reasonably determined by the Contract Administrator.

Contractor shall repaint any or all Collection vehicles within thirty (30) days' notice from City, if City determines that their appearance warrants painting.

Collection vehicles shall be painted in a standard color.

#### **7.05.6 Vehicle Operation**

Collection vehicles shall be operated in compliance with Federal, State and local laws and regulations including, but not limited to, the California Vehicle Code, the regulations of the California Air Resources Board (CARB) Waste Collection Vehicle Regulations as established in the California Code of Regulations Title 13 Section 2700 et seq., and all applicable safety and local ordinances. Contractor shall not load Collection vehicles in excess of the manufacturer's recommendations or limitations imposed by Federal, State, or local weight restrictions on vehicles or roads.

#### **7.05.7 Vehicle Certification**

For each Collection vehicle used in the performance of services under this Contract, Contractor shall obtain a certificate of compliance (smog check) issued pursuant to Part 5 of Division 26 of the California Health and Safety Code (Section 43000 et seq.) and regulations promulgated thereunder and/or a safety compliance report issued pursuant to Division 14.8 of the California Vehicle Code (Section 34500 et seq.) and the regulations promulgated thereunder, as applicable to the vehicle. Contractor shall maintain copies of such certificates and reports and shall make such certificates and reports available for inspection upon request by the Contract Administrator.

#### **7.05.8 Vehicle Inspections**

Upon City request, Contractor shall submit the Safety Compliance Report/Terminal Record Update from its Biennial Inspection of Terminal, or BIT. If Contractor receives a terminal rating below satisfactory, Contractor shall notify the City, and Contractor is in violation of the Contract. Contractor has the time allowed by the Department of California Highway Patrol ("CHP") to cure violations and bring the terminal rating up to satisfactory. If the CHP does not adjust the rating to satisfactory or better within six (6) months, then the Contractor shall be considered in default of the contract and the City may terminate this Contract.

The City may cause any Collection vehicle used in the performance of this Contract to be inspected and tested at any time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with all applicable provisions of the State Vehicle Code. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City may be returned to service until its return to service has been approved by the City.

#### **7.05.9 Correction of Defects**

Following any inspection, the Contract Administrator has the right to cause the Collector, at its sole expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary, or unsightly. The Contract Administrator's determination may be appealed to the City Manager, which decision will be final.

## 7.06 CONTAINERS

### 7.06.1 Carts

The Contractor shall be responsible for the purchase and distribution of fully assembled and functional Carts to Customers in the Service Area. All Carts provided by Contractor utilized in the performance of this Contract shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below.

All Carts selected shall be subject to City's approval. Carts must meet color, size, uniformity and quality requirements of the City. The City will not permit Carts with inconsistent colors or in poor condition to be used in the City at any time during the term of this Contract, and may require Contractor to replace such Carts.

#### A. Cart Capacity

The references to Cart sizes in this Contract of 96, 64 and 35 gallons may be approximate. The Cart size may fall within the following range:

- 30 – 38 gallons
- 60 – 70 gallons
- 90 – 101 gallons

The selected sizes must be consistent throughout the City for a uniform appearance.

#### B. Cart Load Capacity

Depending on the capacity, the Carts must have a minimum load capacity as noted below without container distortion, damage, or reduction in maneuverability or any other required functions:

Carts Size (Gallons)	Minimum Load Capacity (LBS)
90-101	200
60-70	130
30-38	70

#### C. Cart Durability

Each Cart must remain durable, and must, at minimum, meet the following durability requirements to satisfy its intended use and performance for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;

- All wheel and axle assemblies must provide continuous maneuverability and mobility as originally designed and intended; and
- Resist degradation by airborne gases or particulate matter currently present in the ambient air of the City.

**D. Chemical Resistant**

Carts must be resistant to damage from common household or residential products and chemicals. Carts must also be resistant to damage from human and animal urine and feces.

**E. Stability and Maneuverability**

The Carts must be stable and self-balancing in the upright position, when either empty or loaded to their maximum design capacity with an evenly distributed load, and with the lid in either a closed or open position. The Carts must be capable of maintaining their upright position in sustained or gusting winds of up to 25 miles per hour from any direction. The Carts must be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to their maximum design capacity on a level, sloped or stepped surface.

**F. Cart Handles**

The Cart handles and handle mounts may be an integrally molded part of the cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the cart or lifting the lid. Pinch points are unacceptable.

**G. Cart Lid**

Each Cart must be provided with a lid that continuously overlaps and comes in contact with the Cart body or otherwise causes an interface with the Cart body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Cart to conveniently and easily open and shut the lid throughout the serviceable life of the container;
- The lid handle must be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight so as to prevent an empty Cart from tilting backward when flipping the lid open; and
- The lid must be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position where it may rest against the backside of the container body.

**H. Cart Color and Appearance**

The Solid Waste, Recycling and Green Waste Carts will be differentiated by the color of the Cart lid. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. The base of all carts will be green, and the lid of the Solid Waste Carts will be gray, the lid of the Recycling Carts will



be blue, and lid of the Green Waste Carts will be green. Cart colors shall be consistent throughout City.

**I. Cart Labeling and Hot Stamping**

Labels that identify acceptable and unacceptable materials shall be placed on the inside of the Cart lid, and hot stamps shall be on the top of the lid and/or on the body of the Cart. Labels shall be replaced when worn. Cart labels and hot stamps will include the maximum weight the cart can hold and specific instructions on what materials should and should not be placed in each Cart.

**J. Replacement of Carts**

Contractor's employees shall take care to prevent damage to carts by unnecessary rough treatment. Any Cart damaged by the Contractor shall be replaced by the Contractor, at the Contractor's expense, within five (5) Work Days at no cost or inconvenience to the Customer.

Upon notification to the Contractor by the City or a Customer that the Customer's Solid Waste, Recycling, or Green Waste Cart(s) has been stolen or damaged beyond repair, the Contractor shall deliver a replacement Cart(s) to such Customer within five (5) Work Days at no additional cost unless Contractor can demonstrate to the Contract Administrator beyond a reasonable doubt that the damage or loss was due exclusively to the Customer's intentional or negligent behavior. The Contract Administrator shall make the final determination. All repairs must restore the Cart to its full functionality. Unsightly/worn-out Carts shall be replaced by Contractor upon Customer request. The Contractor shall maintain records documenting all Cart replacements occurring on a monthly basis.

Contractor shall be responsible for graffiti removal within two (2) Work Days at no additional charge to the Customer or to City.

In addition to the initial Cart substitution program provided above at the time of initial delivery of Carts, each Customer shall be entitled to the replacement of one (1) Solid Waste Cart, one (1) Recycling Cart, and one (1) Green Waste Cart for any reason other than theft or damage on one (1) occasion during the life of this Contract at no cost to the Customer, unless caused by the fault of the Customer. Except in the case of a Cart that must be replaced because of damage caused by Contractor or in the case where Contractor elects to replace a Cart rather than repair it on-site, Contractor shall be compensated by Customer for the cost of those replacements in excess of one (1) per type of Cart per Customer during the life of the Contract, in accordance with the Cart Delivery Service Rate set forth in Exhibit 1, as adjusted.

Contractor understands and agrees that this provision is intended to be applied on a per-Cart-type basis and accordingly each Customer could receive up to three (3) replacement Carts, one (1) of each type, during the term of the Contract.

**K. Repair of Carts**

Contractor shall be responsible for repair of Carts including but not limited to, hinged lids, wheels and axles, unless caused by the fault of the Customer. Within five (5) Work Days of notification by the City or a Customer of the need for such

repairs, the Contractor shall repair the Cart or, if necessary, remove the cart for repairs and deliver a replacement cart to the Customer.

- L. **Cart Delivery, Removal or Exchange**  
Upon notification to the Contractor by the City or a Customer requesting delivery, removal or exchange of Cart(s), the Contractor shall complete such request within five (5) Work Days.
- M. **Ownership of Solid Waste, Recycling and Green Waste Carts**  
Ownership of Solid Waste, Recycling, and Green Waste Carts shall rest with the Contractor, except that at the end of this Contract the City shall have the right to purchase such Carts which are 10 years or older for \$5.00 each. At its sole discretion, City may elect not to exercise its rights with regards to this Section and in such case the carts shall remain the property of the Contractor upon termination of this Contract. In this event the Contractor shall be responsible for removing all Carts in service and reusing or Recycling such carts at the end of the Contract at no additional charge.
- N. **Collection of Customers' Discarded Collection Containers**  
The Contractor shall collect used, discarded, or unwanted Solid Waste collection containers used by SFD after the Effective Date, at no cost. To the extent feasible, Contractor shall recycle, or cause to have recycled the used, discarded, or unwanted collection containers.

#### **7.06.2 Bins, Roll-off Boxes and Compactors**

- A. **Purchase and Distribution of Containers**  
The Contractor shall be responsible for the purchase and distribution of Containers such as Bins, Roll-Off Boxes and Compactors to all MFD and Commercial Customers in the Service Area (except Commercial Customers receiving Cart Service).  
  
Contractor shall also distribute Containers to new MFD and Commercial Customers that are added to the Service Area during the term of this Contract. Containers to be distributed shall be completed within five (5) Work Days of receipt of the request by the MFD or Commercial Customer.
- B. **Replacement of Containers**  
Care shall be taken by Contractor's employees to prevent damage to Containers by unnecessary rough treatment. Any Container damaged by the Contractor shall be replaced by the Contractor, at the Contractor's expense, within five (5) Work Days at no cost or inconvenience to the Customer.
- C. **Repair of Containers**  
Contractor shall be responsible for repair of Containers at no additional charge, unless caused by the fault of the Customer. Within five (5) Work Days of notification by the City or a Customer of the need for such repairs, the Contractor shall repair the Container or if necessary, remove the Container for repairs and deliver a replacement Container to the Customer. Container repair shall also include the removal of graffiti from the Container within two (2) Work Days following receipt of notice from the Customer or the Contract Administrator.

- D. **Container Exchange**  
Upon notification to the Contractor by the City or a Customer that a change in the size or number of the Containers is required, the Contractor shall deliver such different-sized or number of Containers to such Customer within five (5) Work Days.
- E. **Ownership of Containers**  
Ownership of Bins, Roll-Offs of Compactors distributed by the Contractor shall rest with the Contractor. The City may direct Contractor to remove and dispose of the Containers at the end of the Contract at no additional charge.
- F. **Annual Cleaning**  
Once each Contract Year, as needed to maintain a neat appearance and prevent nuisance conditions, at no charge to the Commercial Customer, Contractor shall clean all Containers at a Commercial Premises or shall replace the dirty Containers with clean Containers and remove the dirty Containers for cleaning.
- G. **Bin Enclosure Cleanout**  
Contractor is responsible for cleaning out Customers' overflowing Bins and enclosures within twenty-four (24) hours of notification by City. Contractor may follow the procedures in Section 7.03.11 to address overfilling of Containers.
- H. **Container Signage, Painting, and Cleaning**  
All metal Containers of any service type furnished by the Contractor shall be either painted or galvanized. Recycling Bins shall include a blue-colored label identifying the types of material to be placed in the Bin. All Containers shall display the Contractor's name and Contractor's customer service telephone number, and shall be kept in a clean and sanitary condition. Such Containers as are provided by the Contractor shall be steam cleaned by the Contractor as frequently as necessary so as to maintain them in a sanitary condition. Containers will be subject to periodic, unscheduled inspections by the City and determination as to sanitary condition shall be made by the City.

#### **7.07 PERSONNEL REQUIREMENTS**

The Contractor shall employ and assign qualified personnel to perform all services set forth herein. The Contractor shall be responsible for ensuring that its employees comply with all applicable laws and regulations and meet all federal, state and local requirements related to their employment and position.

- A. The City may request the transfer of any employee of the Contractor who materially violates any provision hereof, or who is wanton, negligent, or discourteous in the performance of his duties.
- B. Contractor's field operations personnel shall be required to wear a clean uniform shirt bearing the Contractor's name. Contractor's employees, who normally come into direct contact with the public, including drivers, shall bear some means of individual photographic identification such as a name tag or identification card.
- C. Each driver of a Collection vehicle shall at all times carry a valid California driver license and all other required licenses for the type of vehicle that is being operated.

- D. Each driver of a Collection vehicle shall be proficient in written and spoken English.
- E. Each driver of a Collection vehicle shall at all times comply with all applicable state and federal laws, regulations and requirements.
- F. Contractor's employees, officers, and agents shall at no time be allowed to identify themselves or in any way represent themselves as being employees of the City.

#### **7.08 PERFORMANCE REVIEW MEETING**

Contractor acknowledges and agrees that one of City's primary goals in entering into this Contract is to ensure that the Collection Services are of the highest caliber, that Customer satisfaction remains at the highest level, that maximum diversion levels are achieved, and that materials collected are put to the highest and best use to the extent possible.

City may hold a meeting annually to review Contractor's Solid Waste Collection efforts, source reduction, processing and other diversion services and overall performance under this Contract. The purpose of the Performance Review Meeting is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided by Contractor with adequate quality, effectiveness and economy, and in full compliance with the terms of this Contract. Topics for discussion and review at the Solid Waste Services and Performance Review Meeting shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Contract, developments in the law, new initiatives for meeting or exceeding the Act's mandates, regulatory constraints, results of route audits, and Contractor performance. City and Contractor may each select additional topics for discussion at any Performance Review Meeting.

City shall notify Contractor of its intent to hold a Performance Review Meeting at least sixty (60) days in advance thereof. Thirty (30) days after receiving notice from City of a Performance Review Meeting, Contractor shall submit a report to City which may contain such information as it wishes to have considered, and shall contain the following:

- A. Current diversion rates and a report on Contractor's outreach activities for the past year.
- B. Recommended changes and/or new services to improve City's ability to meet the goals of the Act and to contain costs and minimize impacts on rates. A specific plan for the Act compliance shall be included.
- C. Any specific plans for provision for new or changed services by Contractor.
- D. Customer complaint records. The reports required by this Contract regarding Customer complaints shall be used as one basis for review of Contractor's performance, and Contractor may submit other relevant performance information and reports for consideration at the Solid Waste Services and Performance Review Meeting. In addition to the above, City may request Contractor to submit any other specific information relating to its performance for consideration at the Solid Waste Services and Performance Review Meeting, and any Customer may submit comments or complaints

before or during the Meeting, either orally or in writing. Contractor shall be present at and participate in the Solid Waste Services and Performance Review Meeting.

As a result of its findings following any Solid Waste Services and Performance Review Meeting, City may require Contractor to provide expanded or new services within a reasonable time and City may direct or take corrective actions for any performance inadequacies (although nothing contained in this provision should be construed as requiring City to hold a Solid Waste Services and Performance Review Meeting in order to enforce any rights or remedies it has pursuant to the terms hereof.) Should City require expanded or new services as a remedy for Contractor's failure to perform its obligations hereunder, no additional compensation shall be due for such services. Otherwise, any new or expanded services required of Contractor shall be subject to the provisions of Section 14.07.2.

## **ARTICLE 8. PAYMENTS TO THE CITY**

In addition to any other consideration set forth herein, as part of its consideration for entering into this Contract, and for the exclusive right and privilege to provide Solid Waste Services as specified herein, Contractor shall provide the following:

### **8.01 PAYMENT SCHEDULE**

Remittance of the payments set forth in this Article 8 shall be due on the dates specified in Sections 8.02, 8.03, and 8.05. If the payment is not submitted on or before the specified date, the Contractor must pay to the City a service charge, in an amount equal to ten percent (10%) of the amount owing for the payment period. The Contractor must pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty-day period during which the Franchise Fee remains unpaid. Late payment service charges will not be included in any revenue requirement. The Contractor agrees that the service charges required by this Section reasonably reflect the cost to the City to process all delinquency calculations and notices, and to monitor the Contractor's services.

### **8.02 FRANCHISE FEE**

In consideration of the exclusive right, duty and privilege to collect, remove, and dispose all Solid Waste, recycle all Recyclable Materials collected and divert all Green Waste collected Contractor shall pay City 7.5% of Gross Receipts less the amount collected for the Storm Water Fee for the term of this Contract. Franchise Fees shall be computed on the basis of cash received each quarter for services rendered in accordance with this Contract. Contractor shall prepare and mail remittance each quarter not later than 20 calendar days after the end of each quarter. Franchise fee payments remitted later than the twentieth day after the end of the quarter shall be subject to a late penalty fee of 1% of the entire amount due, per week, or prorated portion thereof. The remittance shall be accompanied by a report setting forth the basis, and calculations used for computing the amount due. The Gross Receipts number used to calculate the fee paid shall be the same number as contained in the general books of the Contractor.

As part of the preparation of its annual report, the Contractor shall reconcile Gross Receipts and franchise fees paid with respect to Customers billed by Contractor, and report to the City any under payment or overpayment of franchise fees for the prior year. Any overpayment or underpayment shall be accounted for as part of the next required franchise fee payment to the City.

### **8.03 AB 939 FEE**

Contractor shall pay to City an AB 939 fee as established by resolution of the City Council, at the same time and in the same manner as the Franchise Fee. As of the effective date, the AB 939 fee is 2.0% of Gross Receipts less the amount collected for Storm Water Fee. The Contractor shall be entitled to a rate adjustment in accordance with Section 9.04 should the AB 939 fee be increased.

### **8.04 STORM WATER FEE**

Contractor shall pay to city a Storm Water Fee as established by resolution of the city council, at the same time and in the same manner as the Franchise Fee. The contractor shall be entitled to a rate adjustment in accordance with Section 9.04 should the storm water fee be increased.

### **8.05 OTHER PAYMENTS**

The City reserves the right to establish other payments or increase the amount of existing payments, as it deems reasonably necessary. The amount, time, and method of payment and the applicable adjustment process will be established by the City as a Change in Law, and the Contractor shall be entitled to a rate adjustment in accordance with Section 14.07.1.

### **8.06 ACCEPTANCE OF PAYMENT BY CITY**

No acceptance by City of any payment shall be construed as an accord that the amount is the correct amount, nor shall such acceptance of payment be construed as a release of any claim City may have against Contractor for any additional sums payable under the provisions of this Contract. All amounts paid shall be subject to independent audit and recompilation by City. Any overpayment or underpayment shall be accounted for as part of the next required franchise fee payment to the City. If, after the audit, such recompilation indicated an underpayment, Contractor shall reimburse City for all reasonable costs and expenses incurred in connection with the audit and recompilation, within ten (10) days of receipt of written notice from City that such is the case. Contractor shall also pay interest to the City for any underpayment at an annual rate of ten percent (10%).

## **ARTICLE 9. CHARGES AND RATES**

### **9.01 GENERAL**

The service rates as established in Exhibit 1 which is attached hereto and included in this Contract and as may be adjusted under the terms of this Contract shall be the Maximum Contractor Compensation. Contractor may receive no other compensation unless approved in advance in writing by the City, or as otherwise provided in this Contract.

Contractor shall not charge for Collection Services provided to City Facilities as included in Exhibit 4.

### **9.02 INITIAL RATES**

The Maximum Contractor Compensation through the Rate Year ending June 30, 2013, shall not exceed the maximum rates set forth in Exhibit 1.

### **9.03 SCHEDULE OF FUTURE ADJUSTMENTS**

Beginning with the Rate Year starting July 1, 2013 and for all subsequent Rate Years, Contractor may request an annual adjustment to the Maximum Contractor Compensation shown in Exhibit 1. The Contractor shall submit its request in writing directly to City staff or via certified mail, on or before April 15, 2013 and April 15 of each succeeding Rate Year, and shall be based on the method of adjustment described in Section 9.04. Failure to submit a written request by

April 15 of each year shall result Contractor waiving the right to request such an increase for the subsequent Rate Year. Missed rate adjustments may not be added to rate adjustment applications in ensuing years.

#### **9.04 METHOD OF ADJUSTMENTS**

The intent of this Contract is to provide for an annual adjustment to the Maximum Contractor Compensation. The first annual adjustment will be effective July 1, 2013. The Contractor shall prepare and submit its calculation of each component of the Maximum Contractor Compensation April 1 of each year. The Contractor's submittal shall present the calculation and all supporting documentation needed to verify the calculation as shown in Exhibit 2. The Contract Administrator will review the Contractor's submittal within thirty (30) calendar days of receipt and either 1. acknowledge the City's acceptance of the Maximum Contractor Compensation or 2. shall provide comments describing any exceptions to the Contractor's calculations. If the Contract Administrator and Contractor cannot agree upon the amount of the rate adjustment authorized pursuant to this section, the City Manager shall make a final determination and his or her decision is final and binding.

Each component of the Rates shall be adjusted as follows:

- A. Service Component - The service component of each rate will be adjusted annually based on the annual change in the Consumer Price Index – All Urban Consumers, San Diego All Items (CUURA424SAO) for the prior year weighted at 90%. The allowable annual change will be between 0.0% and 5.0%.
- B. Occupancy Component - The Occupancy Component of each rate shall be adjusted based on the change in the monthly amount paid by the Contractor for facility use associated with this Contract. The initial occupancy component is based on a monthly facility lease cost of \$60,000. Ninety (90) days prior to the annual change in rates, the Contractor will submit to the City all documents supporting its occupancy cost. The occupancy component of the rate will increase or decrease based on the formulas established in Exhibit 2.
- C. Disposal Component – The Disposal Component of each rate shall be adjusted to reflect the change in the applicable tip fee at the Palomar Transfer Station, as approved by the City.
- D. Franchise Fee/AB 939 Fee Component – The Franchise Fee (7.5%)/AB 939 fee (2%) portion of each rate shall be set at 9.5% of the total of the Service Rate plus the Occupancy Rate plus the Disposal Component plus the Franchise Fee.
- E. Storm Water Component – The Storm Water Component of each rate shall be set by the City and not subject to Franchise Fees.

#### **9.05 EXTRAORDINARY ADJUSTMENT**

Contractor may petition the City in writing at reasonable times other than that allowed under Section 9.04 for an adjustment in the Maximum Contractor Compensation in the event of extraordinary changes in the costs of operations or programs that satisfy all of the following conditions: (i) materially alters Contractor's operations or overall costs; (ii) could not reasonably have been foreseen by a prudent operator; and (iii) by all reasonable expectations will continue for a period of at least six (6) months. The Contractor may request only one such adjustment per Rate Year. Without limitation, examples of extraordinary changes that would justify a request for an adjustment include the inability to utilize a particular Disposal Site or processing facility, or substantial increases in the cost of fuel or other required commodities arising from terrorist activities, wartime conditions, the loss of global energy resources, or catastrophic natural events.

Such changes shall not include changes in the market value of Recyclables or inaccurate estimates by the Contractor of its cost of operations. Extraordinary rate adjustments shall only be effective after approval by City Council and may not be applied retroactively.

Contractor's request shall contain substantial proof and justification to support the need for the adjustment. For each request brought pursuant to this section, Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate.

The City may request from the Contractor such further information as it deems necessary to fully evaluate the request and make its determination. City may request a copy of the Contractor's annual financial statements in connection with the City's review of Contractor's rate adjustment request. City is entitled to a reimbursement of its costs in reviewing a request for an extraordinary adjustment. City shall review the Contractor's request and, in City's reasonable judgment, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment.

#### **9.06 GUARANTEED CUSTOMER RATE**

Contractor guarantees that throughout the term of this Contract that the Contractor's net rate for Single-Family Residential Cart Collection Service (for a 64 or 96 gallon cart) and Contractor's net rate for Multi-Family and Commercial Bin Collection Service (for a three-yard bin picked up once per week) (collectively, the "Compared Services") will be in the lowest third of net rates being charged for similar services in all cities in San Diego County using a franchised collection system. The lowest third will be based on a ranking of the cities with comparable services as described below. For purposes of this section, "net rate" shall mean the rate charged by Contractor (or the collector with whom Contractor is being compared) for providing the Compared Services, less City Fees described below. Specifically, only the rates charged related to the provision of integrated solid waste management services shall be included in the comparison. "City Fees" shall include franchise, administrative, AB 939, HHW and storm water fees paid by Contractor to City.

As used in this section, the term "similar services" with respect to Single-Family Residential Cart Collection Services shall refer to an automated Cart system utilizing separate Carts for Solid Waste, Recyclables and Green Waste. If Comparable Cities (as defined herein) have rates for multiple sizes of Residential Carts, the rate for the largest size Solid Waste Cart shall be used. A city that has manual service for Green Waste will also be included as a Comparable City. Furthermore, similar services and the rates for such services must be provided by a private hauler pursuant to a city franchise. The City and Contractor agree that the list of cities in Exhibit 6 attached hereto provide "similar services" as that term is used herein (collectively, the "Comparable Cities"). If any of the Comparable Cities discontinue the fully automated Cart system described above, or other cities add automated Cart system for all three types of materials, they shall, respectively, be deleted or added to the list of Comparable Cities.

As of April 1 of each contract year, the City shall prepare a net rate comparison to Comparable Cities in the format of Exhibit 6 attached hereto (a "Rate Review"). The exhibit will reflect the most recent rates being charged. The Contractor shall have 15 days to review and notify the City of any objections to the survey. Once determined that current net rates for the City of Carlsbad are within the lowest third of net rates being charged in the County of San Diego by Comparable Cities, the contractor qualifies for a rate adjustment pursuant to Section 9.04.



At any time during the contract term, if the City determines that the Contractor's net rates are no longer in the lowest third of net rates being charged by Comparable Cities for similar services in all cities in San Diego County using a franchised collection system, Contractor shall reduce its rates for any or all of the Compared Services described above within 30 days of City giving it notice.

Single Family Residential Cart Collection Services. Should a Rate Review indicate that Contractor's net rates for Compared Services for Single-Family Residential Cart Collection Service are in the lowest third of net rates being charged for similar services by Comparable Cities, the City shall approve Contractor's annual rate adjustments for all Single-Family Residential Services (35, 64 and 96 gallon carts) pursuant to Section 9.04, provided that that Contractor's requested rate increase will not cause the Contractor's adjusted net rates to exceed the lowest third (according to the most recent Rate Review). Should the Contractor's requested rate increase cause the net rates for Single-Family Residential Cart Collection Service to exceed the lowest third, the rate increase will be limited to an amount that would keep the net rates in the lowest third (according to the most recent Rate Review).

Multi-Family and Commercial Bin Collection Services. Should a Rate Review indicate that Contractor's net rates for Compared Services for three-yard Bins collected once per week is in the lowest third of net rates being charged for similar services by Comparable Cities, the City shall approve Contractor's annual rate adjustments for all Multi-Family Residential and Commercial Services pursuant to Section 9.04, provided that that Contractor's requested rate increase will not cause the net rates for three-yard Bins collected once per week to exceed the lowest third (according to the most recent Rate Review). Should the Contractor's requested rate increase cause the net rates for three-yard Bins collected once per week to exceed the lowest third, the rate increase for all Multi-Family Residential and Commercial Services will be limited to an amount that would keep the net rates in the lowest third (according to the most recent Rate Review).

#### **9.07 LIMITATIONS ON RATE ADJUSTMENTS**

If any rate increase is subject to City resident approval pursuant to Article XIID of the California Constitution, the City shall undertake the notice and protest process required therein. Should a majority protest, as provided for under Article XIID of the California Constitution, invalidate approval of any rate increases provided for herein, the City shall either:

- A. pay Contractor an amount equivalent to the additional revenue the increase in the rates would have generated, or
- B. negotiate modifications to the services provided under this Contract which would result in
  - rates equal to the rates in effect prior to the rejected proposed increase in rates, and
  - Company's projected profit margin under the Contract being no less than 13.9% (the Profit margin projected by Company at that time this Contract is executed). Contractor's projected profit margin shall be based on an income statement format as shown in Exhibit 7. For purposes of the profit margin calculation, landfill disposal costs and Franchise Fees / AB939 Fees shall be considered as pass-through expenses not subject to profit. Income Taxes shall be treated as a non-allowed expense and will not be considered in the profit calculation. The prior year's actual

income statement prepared by Contractor's independent auditor consistent with GAAP (full accrual) and in the format of Exhibit 7 will also be provided.

## **ARTICLE 10. RECORD KEEPING AND REPORTING REQUIREMENTS**

### **10.01 GENERAL**

Contractor shall compile and maintain records related to its performance under this Contract as necessary to develop the reports required by this Contract. Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with and to meet the reporting and Solid Waste program management needs of the City, the Act, other Applicable Laws, and the requirements of this Contract.

Record keeping and reporting requirements specified in this Contract shall not be considered limiting or necessarily complete. In particular, Article 10 is intended to highlight the general nature of records and reports and their minimum content and is not meant to comprehensively define the scope and content of the records and reports. Upon written direction or approval of City, the records and reports required by Contractor in accordance with this and other Articles of the Contract shall be adjusted in number, format, or frequency.

Contractor shall maintain all records necessary to allow the City to determine Contractor's compliance with the terms of the Contract and compliance with the performance standards presented in this Contract. The records shall be maintained in a manner that allows for easy verification of Contractor's performance.

### **10.02 RECORD KEEPING**

#### **10.02.1 General**

Contractor shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City. All records shall be maintained for five (5) years after the expiration or early termination of this Contract.

#### **10.02.2 Inspection of Records**

City shall have the right to inspect or review specific documents or records of Contractor or Affiliates that City shall deem, in its reasonable judgment, necessary to evaluate annual reports, compensation applications provided for in this Contract, and Contractor's performance provided for in this Contract.

Contractor agrees that the relevant records of any Affiliates conducting operations addressed in the Contract shall be provided or made available to City and its official representatives for review. The City, its auditors and other agents selected by the City, shall have the right, during regular business hours, to conduct unannounced on-site inspections and review of the records and accounting systems of Contractor and to make copies of any documents required for the above reviews.

#### **10.02.3 Retention of Records**

Unless otherwise herein required, Contractor shall retain all records and data required to be maintained by this Contract for the term of this Contract plus at least five (5) years after expiration or early termination of the Contract. Records and data shall be in a chronological and organized form and readily and easily interpreted. At the City's request, records and data required to be retained shall be retrieved in a timely manner

(which shall not exceed more than ten (10) Work Days unless Contractor obtains prior written approval from the City) by Contractor and made available to the City.

Contractor shall maintain copies of all Billings and Billing collections (e.g., Customer payments) records or copies of Billing summary reports (that document all Billings and Billing Collections for each Customer) for five (5) years, following the date of Billings, for inspection and verification by City.

Records and data required to be maintained that are not specifically directed to be retained that are, in the reasonable judgment of the City, material to the determination of Contractor's compensation or rates or to determine Contractor's performance under this Contract, shall be retrieved by Contractor and made available to the City in a timely manner (which shall not exceed ten (10) Work Days unless Contractor obtains prior written approval from the City). When records and data are not retained or provided by the Contractor, the City may make reasonable assumptions regarding what information is contained in such records and data, and such assumption(s) shall be conclusive in whatever action the City takes.

#### **10.02.4 Record Security**

Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as a fire, theft, and an earthquake. Electronically-maintained data and/or records shall be protected, backed up, and stored at a separate site from the original data.

#### **10.02.5 Accounting Records**

Contractor shall maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Collection Services, prepared on an accrual basis in accordance with generally accepted accounting principles. Billing, gross receipt, rebate and disposal records shall be subject to audit, copy, and inspection. Contractor shall maintain and preserve all billing, gross receipts, rebate and disposal records for a period of not less than five (5) years following the close of each of the Contractor's fiscal years.

#### **10.02.6 Collection Service Records**

Contractor shall maintain and retain records relating to:

- A. Customer and Billing information including, but not limited to, the following for each Customer:
  - Names, addresses, and phone numbers of Customer, billing contact person, and, if appropriate, for property manager or on-site contact person;
  - Solid Waste service level, Recyclable Materials service level, and Green Waste service level (where service level includes the number of Containers, size of each Container, and the Collection frequency of each Container);
  - Number of tenant or living units at MFD Complexes;
  - Special services (e.g., Roll-out Service, Scout Service, lock/unlock charges, etc.);
  - Contractor's Customer and Billing system shall allow for information to be compiled easily and separately for each service sector.

- B. Quantities of Residential Solid Waste and Commercial Solid Waste by type (e.g., Solid Waste, Recyclable Materials, Green Waste) collected, purchased, processed, sold, donated or given for no compensation, and residue disposed.
- C. Route sheets and route maps identifying the accounts serviced by each Collection vehicle on a daily basis.
- D. Facilities, equipment and personnel used.
- E. Facilities and equipment operations, maintenance and repair.
- F. Tonnage of Solid Waste, Recyclable Materials, and Green Waste listed separately by materials type and service sector and the facility where materials were delivered.
- G. Monthly overall diversion level, monthly SFD diversion level, and the monthly Commercial diversion level (each stated as a percentage) and calculated in accordance with Attachment I.
- H. Recyclable Materials, Household Batteries, Cell Phones and Green Waste Collection participation and set-out rates.
- I. Tonnage of materials collected from on-call Bulky and community drop-off events as described in Section 4.05 reported separately by material type collected and listing facilities where materials were delivered (e.g., Goodwill Industries, Transfer Station and Processing Site, etc.).

#### **10.02.7 Other Records**

Contractor shall maintain all other records reasonably related to provision of Collection Services, whether or not specified in this the Contract.

#### **10.02.8 Customer Service Records**

Daily logs of all Complaints and Inquiries provided under this Contract shall be retained for a minimum of thirty-six (36) months. Contractor shall maintain and retain customer service center records, which include, but are not limited to the following customer service center statistics.

- Number of calls received on a daily and monthly basis;
- Number of calls answered on a daily and monthly basis;
- Number of abandoned (dropped) calls on a daily and monthly basis;
- Average abandoned time (i.e., hold time before abandoning call);
- Number of delayed calls (i.e., calls where caller is placed on hold before speaking with a Customer Service Agent) on a daily and monthly basis;
- Average hold time for incoming calls on a daily and monthly basis;
- Percentage of calls answered by a person within thirty (30) seconds on a daily and monthly basis;
- Percentage of calls answered within three (3) minutes on a daily and monthly basis;
- Number of e-mail responses sent from the Customer Service Department to Customers on a monthly basis;

- Number and percentage of Complaint and inquiry e-mails or submissions through Contractor website that received responses before close of business on the day received on a monthly basis;
- Number and percentage of Complaint and inquiry e-mails that received responses by the close of business on the day following the receipt of the Complaint or Inquiry;
- Number of Complaints and Inquiries received through Contractor's website on a daily and monthly basis;
- Minimum, average, and maximum number of Customer Service Representatives employed during each month; and,
- Number of Customer Service Representatives employed during each month.

### **10.03 ANNUAL REPORTING**

#### **10.03.1 General**

Except as otherwise provided, annual reports shall be submitted no later than April 1 for the previous calendar year. Annual reports shall be submitted in hard copy, and shall be provided electronically in software acceptable to the City.

#### **10.03.2 CalRecycle Reports**

Contractor shall assist the City to prepare the Annual Diversion Report required by CalRecycle by providing necessary information.

#### **10.03.3 City Reports**

Annual reports to the City shall include:

- Contractor shall prepare a report that summarizes the public education and information activities undertaken during the year, including distribution of bill inserts, collection notification tags, community information and events, tours and other activities related to the provision of Collection Services. This report shall detail the impact of these activities.
- Contractor shall prepare a report that lists all complaints received, the date and nature of the complaint, and the resolution of the complaint.
- Contractor shall prepare a report that summarizes the following information, along with corresponding historical data, the specific format of which is to be approved by the City:
  - Total tonnages collected, diverted and disposed by program and waste stream;
  - Commercial service level profile (as of December 31st of each year).
  - A list of commercial waste audits conducted and results.
- Contractor shall prepare a report that describes efforts to identify new or enhanced diversion programs to assist City with efforts to increase diversion, and recommendations for implementation.
- By July 1 of each year, Contractor shall prepare and submit the Household Hazardous Waste information required on state Form 303.

#### **10.03.4 Additional Reporting**

The Contractor shall furnish the City with any additional reports as may reasonably be required, such reports to be prepared within a reasonable time following the reporting period.

- A. Contractor shall maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Customers for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contract or pursuant to this Contract.
- B. Contractor shall maintain all documents and records, which demonstrate performance under this Contract for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Contract.
- C. Any records or documents required to be maintained pursuant to this Contract shall be made available for inspection or audit in accordance with Section 10.02.2, at any time during regular business hours, upon written request by the Contract Administrator, the City Attorney, Utilities Director, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at Contractor's address indicated for receipt of notices in this Contract.

## **ARTICLE 11. INSURANCE**

### **11.01 INSURANCE POLICIES**

Contractor shall secure and maintain throughout the term of this Contract insurance, approved by the City that covers claims for injuries to persons or damages to property which may arise from or in connection with Contractor's performance of work or services under this Contract. Contractor's performance of work or services shall include performance by Contractor's employees, agents, representatives and subcontractors.

#### **11.01.1 Minimum Scope of Insurance**

Insurance coverage shall be at least this broad:

- Insurance Services Office Commercial General Liability coverage form CG 0001 including products-completed operations, property damage, bodily injury, and personal injury.
- Insurance Services Office form CA 0001 covering Automobile Liability, code 1 "any auto".
- Workers' Compensation insurance as required by the State of California and Employers Liability Insurance.
- Contractors Pollution Liability applicable to the work being performed and including completed operations.

#### **11.01.2 Minimum Limits of Insurance**

The limits of liability for the insurance required shall provide coverage for not less than the amounts listed below. If the Contractor maintains higher limits than the minimums shown below, the City shall be entitled to coverage for higher limits maintained by the Contractor. Contractor shall maintain insurance limits no less than:

- Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. When such amounts are exhausted, Contractor's Umbrella policy will provide additional \$15,000,000 aggregate coverage.
- Automobile Liability: \$10,000,000 combined single limit per accident for bodily injury and property damage.
- Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the State of California and Employers Liability limits of \$3,000,000 per accident.
- Contractors Pollution Liability: \$10,000,000 per occurrence and \$10,000,000 aggregate.

## **11.02 DEDUCTIBLES AND SELF-INSURED RETENTION**

Any deductibles or self-insured retentions shall be for the account of the Contractor and payment of such shall be made entirely by Contractor without contribution from the City.

## **11.03 ENDORSEMENTS**

### **11.03.1 General Liability**

- The policy is to be endorsed to provide that the City, its officials, employees, and volunteers are additional insureds as respects liability arising out of activities performed by, or on behalf of, Contractor; products and completed operations of Contractor; and premises owned, leased or used by Contractor.
- The coverage shall contain no special limitations on the scope of protection afforded to City, its officials, employees, and volunteers.
- As respects the liabilities assumed by Contractor under this Contract, the policy is to be endorsed to contain: Contractor's insurance coverage is primary insurance as respects City, its officials, employees, and volunteers. Any insurance, or self-insurance maintained by City, its officials, employees, and volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
- Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

### **11.03.2 Automobile Liability**

This policy is to be endorsed to delete the Pollution and Asbestos exclusion and add the Motor Carrier Act endorsement (MCS-90) and any other endorsements required by federal and state authorities.

### **11.03.3 Contractors Pollution Liability**

If the Contractors Pollution Liability policy is written on a Claims Made form:

- The retroactive date must be shown on the certificate of insurance and must be before the date of the contract or the beginning of contract work.
- Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
- If the coverage is cancelled or not renewed and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, the contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of the contract work.

- Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

#### **11.03.4 All Coverage**

Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be canceled except after thirty (30) days (ten (10) days in the event of cancellation due to non-payment) prior written notice has been given to City.

#### **11.04 ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers that are admitted carriers in the State of California with a rating in the most recent Best's Key Rating Guide of at least A-:VII, or with carriers that are surplus line insurers on the State of California's List of Eligible Surplus Line Insurers (LESLI) with a rating in the latest Best's Key Rating Guide of at least A:X.

#### **11.05 VERIFICATION OF COVERAGE**

Contractor shall furnish City with certificates of insurance and original endorsements affecting coverage required by this Contract. The certificates and endorsement for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Contractor shall furnish City with new certificates of insurance and endorsements on each renewal of coverage or change of insurers.

##### **11.05.1 Proof of Insurance**

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Contract Administrator:

City of Carlsbad  
Solid Waste Contract Administrator  
5950 El Camino Real  
Carlsbad, CA 92008

#### **11.06 SUBCONTRACTORS**

Contractor shall include all subcontractors physically performing services in the City as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

#### **11.07 MODIFICATION OF INSURANCE REQUIREMENTS**

Subject to the requirements of Section 14.07, the insurance requirements provided in this Contract may be modified or waived by City's Risk Manager, in writing, upon the request of Contractor if the City's Risk Manager determines such modification or waiver is in the best interest of City considering all relevant factors, including exposure to City.

#### **11.08 RIGHTS OF SUBROGATION**

All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against City with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses arising in connection with Contractor's performance of work or services under this Contract covered by the above-described insurance. Contractor shall ensure that any companies issuing insurance to cover the requirements contained in this Contract agree that they shall have no recourse against City for payment or assessments in any form on any policy of insurance. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event of an Occurrence, Claim or Suit' as they appear in any policy of insurance in which City is named as an additional insured, and in the



workers' compensation and employers' liability, contractor's pollution liability and automobile insurance policies, shall not apply to City.

## **ARTICLE 12. INDEMNIFICATION AND BOND**

### **12.01 INDEMNIFICATION**

Contractor shall indemnify and hold harmless City, public officials, officers, directors, employees, volunteers, agents and other contractors, from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals as well as all Court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the Contractor, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), arising from, relative to or caused by the performance of the services authorized or required by this Contract. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property, or the necessity or conduct of notice and hearing procedures required to effect any increase in Maximum Contractor Compensation (to the extent arising from the acts or omissions of Contractor). Contractor agrees, at Contractor's expense, after written notice from the City, to defend any action against the City that falls within the scope of this indemnity, and shall reimburse the City for reasonable costs and expenses incurred in assisting the Contractor with the defense. Additionally, if Contractor, after receipt of written notice from the City, fails to make any payment due under this Contract to the City, Contractor shall pay any reasonable attorneys' fees or costs incurred by the City in securing any such payment from Contractor. Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by Contractor from the City that such amount is due, be made by Contractor prior to the City being required to pay same, or in the alternative, the City, at the City's option, may make payment of an amount so due and Contractor shall promptly reimburse the City for same, together with interest thereon at the rate of twelve percent (12%) per annum simple interest from the date of receipt by Contractor of written notice from the City that such payment is due.

THE PROVISIONS OF THIS SECTION SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS CONTRACT.

### **12.02 HAZARDOUS SUBSTANCES INDEMNIFICATION**

Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to City), reimburse, indemnify, and hold harmless Indemnitees from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:

- Results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnitee is liable, responsible or in any way obligated to investigate, assess, monitor, study,

test, treat, remove, remediate, or otherwise clean up, any Hazardous Contaminant (as defined herein); or

- Relates to material collected, transported, recycled, processed, treated or disposed of by Contractor.

Contractor's obligations pursuant to this section shall apply, without limitation, to:

- Any Claims brought pursuant to or based on the provisions of any environmental law;
- Any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation of Contractor of any facility;
- Any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, disposal, processing or use of any materials recovered by Contractor; and
- Any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Contract.

The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any Affiliate of Contractor.

For purposes of this section, the term "Hazardous Contaminant" shall mean any Hazardous Substance, any Hazardous Waste any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all amendments to any referenced statutory or regulatory provisions made before or after the date of execution of this contract.

THE PROVISIONS OF THIS SECTION SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS CONTRACT.

The foregoing indemnity shall not apply with respect to: (1) any Hazardous Waste, Hazardous Contaminant or hazardous substance generated by the City or its agents and delivered by the City or its agents; (2) any materials delivered by Contractor to a disposal facility or processing facility designated by the City that is not owned or operated by Contractor, unless such material was known by Contractor to be a Hazardous Waste or Hazardous Contaminant and illegal for delivery to such disposal site or processing facility, or (3) the disposal or release of hazardous substances, Hazardous Contaminant or Hazardous Waste, which disposal or release has resulted from the negligence or willful misconduct of the City or its agents.

### **12.03 THE ACT INDEMNIFICATION AND GUARANTEE**

To the extent authorized by law, Contractor agrees to indemnify and hold harmless City from and against all fines and/or penalties imposed by CalRecycle in the event the source reduction and recycling mandates or any other requirement of the Act are not met by City resulting from Contractor breaching this Contract.

THE PROVISIONS OF THIS SECTION SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS CONTRACT.

#### **12.04 PERFORMANCE BOND**

On or before July 1, 2012, the Contractor shall furnish to the City, and keep current, a Performance Bond in a form substantially similar as set forth in Exhibit 3 which is included in and attached to this Contract, for the faithful performance of this Contract and all obligations arising hereunder in an amount as follows:

- Beginning July 1, 2012, the Contractor shall maintain a performance bond throughout the term of this Contract in the amount of Two Million Dollars (\$2,000,000.00).
- The performance bond shall be executed by a surety company licensed to do business in the State of California, having an, A-:VII or better rating, and approved by the City; and included on the list of surety companies approved by the Treasurer of the United States.

##### **12.04.1 Letter of Credit**

As an alternative to the performance bond required by Section 12.04, Contractor may deposit with City an irrevocable letter of credit in an amount as set forth in this Contract. If allowed, the letter of credit must be issued by an FDIC-insured banking institution chartered to business in the State of California, in the City's name, and be callable at the discretion of the City. Nothing in this Section shall, in any way, obligate the City to accept a letter of credit in lieu of the performance bond.

#### **12.05 FOREFEITURE OF PERFORMANCE BOND**

In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required by this Contract, City may declare a portion or all of the performance bond which is necessary to recompense and make whole the City forfeited to the City. Upon partial or full forfeiture of the performance bond, Contractor shall restore the performance bond to its face amount within thirty (30) days of the City's declaration. Failure to restore the performance bond to its full amount within thirty (30) days shall be a material breach of the Contract.

#### **12.06 PERFORMANCE SECURITY BEYOND SERVICE TERM**

Some Contract requirements extend beyond the term of this Contract and other requirements, such as State-approved diversion rates per Section 5.02, will not be substantiated until after the final service date. Therefore, the Contractor shall not terminate the performance bond or letter of credit, and will renew them to ensure continuous availability to the City, until receiving a written release from the City. Any performance bond or letter of credit will automatically expire at the end of thirty six (36) months after the end of the term of this Contract. Permission from the City to discontinue holding these performance securities does not relieve Contractor of payments to the City that may be due, or may become due.

#### **12.07 OBLIGATION**

The execution of this Contract by the Contractor shall obligate the Contractor to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must also be complied with as set forth in this Contract.

#### **12.08 EXCEPTION**

Notwithstanding other provisions of this Contract, Contractor's obligation to indemnify, hold harmless and defend City, its officers and employees shall not extend to any loss, liability, penalty, claim, damage, action or suit arising or resulting from acts or omissions constituting willful misconduct, active negligence or breach of this Contract of/by the City or its officers or employees, provided such breach, active negligence or willful misconduct is determined by

agreement between the parties or by findings of a court of competent jurisdiction. In instances where City, its officers and/or employees are shown to have breached this Contract or been actively negligent or engaged in willful misconduct and where the same accounts for only a percentage of the liability involved, the obligation of Contractor, will be for the entire portion or percentage of liability not attributable to the breach, active negligence or willful misconduct of City, its officers and/or employees.

## **ARTICLE 13. DEFAULT OF CONTRACT**

### **13.01 TERMINATION**

The City may cancel this Contract, except as otherwise provided below in this Section, by giving the Contractor no less than thirty (30) days' advance written notice, to be served as provided in this Contract, upon the happening of any one of the following events:

- A. The Contractor shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
- B. By order or decree of a Court, the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof; or
- C. By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of the Contractor, and such possession or control shall continue in effect for a period of sixty (60) days; or
- D. The Contractor has defaulted, by failing or refusing to pay in a timely manner the liquidated damages or other monies due the City and the default is not cured within thirty (30) days of receipt of written notice by City to do so; or
- E. The Contractor has defaulted by allowing any final judgment in favor of the City against Contractor for the non-payment of money to stand against it unsatisfied and the default is not cured within thirty (30) days of receipt of written notice by City to do so; or
- F. In the event that the monies are due the City hereunder are unpaid, or any other monetary claim made by the City is unsatisfied, after the City has given Contractor thirty (30) days' written notice of such nonpayment; provided that the Contractor shall not be in default if the sum of money is bonded. All bonds shall be in the form acceptable to the City Attorney; or
- G. The Contractor has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Contract or any of the rules and regulations promulgated by the City pursuant thereto or has wrongfully failed or refused to comply with the instructions of the Contract Administrator relative thereto and the default is not cured

within thirty (30) days of receipt of written notice by the City to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by the Contractor of written demand from the City to do so, the Contractor fails to commence the remedy of such default within thirty (30) days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with the Contractor having the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) days, and (b) that it is proceeding with diligence to cure the default, and such default will be cured within a reasonable period of time). Notwithstanding anything contained herein to the contrary, for the failure of the Contractor to provide Collection Services for a period of three (3) consecutive Work Days, the City may secure the Contractor's records on the fourth (4th) Work Day in order to provide interim Collection Services until such time as the matter is resolved and the Contractor is again able to perform pursuant to this Contract; provided, however, if the Contractor is unable for any reason or cause to resume performance at the end of thirty (30) days, all liability of the City under this Contract to the Contractor shall cease and this Contract may be deemed terminated by the City.

### **13.02 VIOLATIONS**

- (a) Notwithstanding the foregoing and as supplemental and additional means of termination of this Contract under this Article, in the event that Contractor shall become a "habitual violator" of a single obligation set forth in this Contract, then provisions set forth in 13.02(b) shall apply. Contractor shall be deemed a "habitual violator" if it defaults in the performance of the same Contract obligation three (3) or more times in any Rate Year (each default a "habitual violator default"). For a Contractor default to qualify as a habitual violator default:
  - (i) the City must give Contractor written notice of each such default,
  - (ii) the City will only give Contractor one written notice for each incident of default, inclusive of all reports of such incident.
  - (iii) Contractor shall be given thirty (30) days from receiving written notice to remedy the default (or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days, such amount of time as is reasonably necessary for Contractor to remedy a default), and
  - (iv) Contractor shall have not taken appropriate steps to correct the reasons for such default.
- (b) If the Contractor becomes a habitual violator, the City shall thereupon issue the Contractor a final warning citing the circumstances therefore, and any subsequent violations by the Contractor shall be grounds for immediate termination of the Contract. In the event of any such subsequent habitual violator default, the City may terminate this Contract upon giving of written final notice to the Contractor, such cancellation to be effective upon the date specified in the City's written notice to the Contractor, and all contractual payments due hereunder plus any and all charges and interest shall be payable to that date, and the Contractor shall have no further rights hereunder. Immediately upon the specified date in such final notice the Contractor shall proceed to cease any further performance under this Contract. Notwithstanding the above, if habitual violator defaults are defaults described in Section 13.06 (liquidated damages defaults), then the City may not terminate this Agreement pursuant to this Section 13.02

until liquidated damages amount for such habitual violator defaults reach \$2,000 in the applicable Rate Year.

### **13.03 EFFECTIVE DATE OF TERMINATION**

In the event of events specified in Sections 13.01 or 13.02, and except as otherwise provided in these subsections, termination shall be effective upon the date specified in the City's written notice to the Contractor and upon that date this Contract shall be deemed immediately terminated and upon such termination all liability of the City under this Contract to the Contractor shall cease, and the City shall have the right to call the performance bond and shall be free to negotiate with other contractors for the operation of the herein specified services. The Contractor for failure to perform shall reimburse the City all direct and indirect costs of providing interim Collection Services.

### **13.04 IMMEDIATE TERMINATION**

City may terminate this Contract immediately upon written notice to Contractor in the event Contractor fails to provide and maintain the performance bond as required by this Contract, Contractor fails to obtain or maintain insurance policies endorsements as required by this Contract, Contractor fails to provide the proof of insurance as required by this Contract.

### **13.05 TERMINATION CUMULATIVE**

City's right to terminate this Contract is cumulative to any other rights and remedies provided by law or by this Contract.

### **13.06 LIQUIDATED DAMAGES**

It shall be the duty of Contractor to perform services under this Contract in accordance with its terms and conditions. In the event Contractor is in default of certain terms and conditions set forth in this Contract, the parties agree that the extent of damage to the City is difficult if not impossible to precisely determine, and for that reason City may assess liquidated damages against Contractor to recover its damages in the event of a breach by Contractor in the following amounts:

LIQUIDATED DAMAGES		
a.	Failure or neglect to resolve each complaint within the time set forth in this Contract in excess of six (6) per Rate Year.	\$150.00 per incident per Customer.
b.	Failure to clean up spillage or litter caused by Contractor.	\$150.00 per incident per location, and any other fine levied by state, local or federal agencies.
c.	Failure to repair damage to Customer property caused by Contractor or its personnel.	\$150.00 per incident per location.
d.	Failure to maintain equipment in a clean, safe, and sanitary manner.	\$150.00 per incident per day.
e.	Failure to have a vehicle operator properly licensed.	\$150.00 per incident per day.
f.	Failure to maintain office hours as required by this Contract.	\$150.00 per incident per day.
g.	Failure to maintain or timely submit to City all documents and reports required under the provisions of this Contract.	\$150.00 per incident per day.
h.	Failure to properly cover materials in Collection Vehicles.	\$150.00 per incident, and any other fine levied by state, local or federal agencies.

LIQUIDATED DAMAGES		
i.	Failure to display Contractor's name and Customer Service phone number on Collection Vehicles, except for reserve vehicles.	\$150.00 per incident per day.
j.	Failure to comply with the hours or days of operation as required by this Contract.	\$150.00 per incident per day.
k.	Failure or neglect to complete at least ninety percent (90%) of each route on the regularly scheduled Collection Service Work Day.	\$150.00 for each route not completed.
l.	Failure to notify Contract Administrator of failure to complete daily routes.	\$150.00 per incident per day.
m.	Changing routes without proper notification to the Contract Administrator.	\$150.00 per incident per day.
n.	Commingling Residential or Commercial Solid Waste with Recyclable Materials.	\$150.00 per incident.
o.	Commingling of materials collected inside and outside the City of Carlsbad without prior approval by the City.	\$150.00 per incident.
p.	Failure to repair or replace damaged carts or bins within the time required by this Contract.	\$150.00 per incident per day.
q.	Failure to deliver or exchange carts or bins within the time required by this Contract.	\$150.00 per incident per day.
r.	Failure to have Contractor personnel in proper uniform.	\$150.00 per incident per day.
s.	Disposal of Recyclable Materials in the Disposal Facility without first obtaining the required permission of the City.	\$1,000.00 per occurrence.

### 13.07 PROCEDURE FOR REVIEW OF LIQUIDATED DAMAGES

The Contractor Administrator may assess liquidated damages pursuant to this Contract on a monthly basis. At the end of each month during the term of this Contract, the Contract Administrator shall issue a written notice to Contractor ("Notice of Assessment") of the liquidated damages assessed and the basis for each assessment.

- A. The assessment shall become final unless, within ten (10) days of the date of the Notice of Assessment, Contractor provides a written request for a meeting with the City Manager to present evidence that the assessment should not be made.
- B. The City Manager shall schedule a meeting with Contractor as soon as reasonably possible after timely receipt of Contractor's request.
- C. The City Manager shall review Contractor's evidence and render a decision sustaining or reversing the liquidated damages as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to Contractor.
- D. In the event Contractor does not submit a written request for a meeting within ten (10) days of the date of the Notice of Assessment, the City Manager's determination shall be final and City may deduct the liquidated damages from amounts otherwise due to Contractor.
- E. City's assessment or collection of liquidated damages shall not prevent City from exercising any other right or remedy, including the right to terminate this Contract, for

Contractor's failure to perform the work and services in the manner set forth in this Contract.

### **13.08 FORCE MAJEURE**

Contractor shall be excused from performance and shall not be liable for failure to perform under this Contract if Contractor's performance is prevented or delayed by acts of terrorism, acts of God, landslides, lightning, forest fires, storms, floods, typhoons, hurricanes, severe weather, freezing, earthquakes, volcanic eruptions, other natural disasters or the imminent threat of such natural disasters, pandemics, quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, strikes, lockouts, or other labor disturbances, acts of government or governmental restraint or other causes, whether of the kind enumerated or otherwise, and whether foreseeable or unforeseeable, that are not reasonably within the control of the Contractor ("Force Majeure"). If as a result of a Force Majeure event, Contractor is unable wholly or partially to meet its obligations under this Contract, it shall give the City promptly written notice of the Force Majeure event, describing it in reasonable detail. The Contractor's obligations under this Contract shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure and only for the period during which the Force Majeure exists. This Section shall apply, without limitation, to Sections 13.01 (Termination), 13.02 (Violations), 13.04 and 13.06 (Liquidated Damages).

## **ARTICLE 14. OTHER AGREEMENTS OF THE PARTIES**

### **14.01 INDEPENDENT CONTACTOR**

In the performance of services pursuant to this Contract, Contractor shall be an independent contractor and not an officer, agent, servant or employee of City. Contractor shall have exclusive control of the details of the services and work performed and over all persons performing such services and work. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither Contractor nor its officers, employees, agents, contractors or subcontractors shall obtain any right to retirement benefits, workers' compensation benefits, or any other benefits which accrued to City employees and Contractor expressly waives any claim it may have or acquire to such benefits.

### **14.02 COMPLIANCE WITH LAW**

In the performance of this Contract, the City and the Contractor shall comply with all applicable laws, regulations, ordinances and codes of the federal, state and local governments, including without limitation the City of Carlsbad Municipal Code.

### **14.03 NO ASSIGNMENT**

No assignment of this Contract or any right occurring under this Contract shall be made in whole or in part by the Contractor without the express prior written consent of the City Manager. The City Council shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by the Contractor, except for an assignment to an Affiliate of Contractor, which shall not be withheld unreasonably. Any assignment of this Contract made by the Contractor without the express written consent of the City Council shall be null and void and shall be grounds for the City to declare a default of this Contract and immediately terminate this Contract by giving written notice to the Contractor, and upon the date of such notice this Contract shall be deemed immediately terminated, and upon such termination all liability of the City under this Contract to the Contractor shall cease, and the City shall have the right to call the performance bond and shall be free to negotiate with other contractors, the Contractor, or any other person or company for the service which is the subject of this Contract. In the event of any assignment, the assignee shall fully assume all the liabilities of the Contractor.



#### **14.04 USE OF SUBCONTRACTOR**

The use of a subcontractor to perform services under this Contract shall not constitute an assignment of Contractor's duties provided that Contractor has received prior written authorization from the Contract Administrator, in his or her reasonable judgment, to subcontract such services and the Contract Administrator has approved a subcontractor who will perform such services. Contractor shall be responsible for directing the work of Contractor's subcontractors and any compensation due or payable to Contractor's subcontractor shall be the sole responsibility of Contractor. The Contract Administrator shall have the right to require the removal of any approved subcontractor for reasonable cause.

#### **14.05 SUBCONTRACTORS**

The Contractor shall require all subcontractors to enter into a contract containing the provisions set forth in the preceding subsection in which contract the subcontractor agrees that Contractor and subcontractor are independent contractors and have no other agency relationship with City.

#### **14.06 NONDISCRIMINATION**

In the performance of all work and services under this Contract, Contractor shall not discriminate against any person on the basis of such person's race, sex, color, national origin, religion, marital status or sexual orientation. Contractor shall comply with all applicable local, state and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

#### **14.07 MODIFICATIONS**

The City shall have the power to make changes in this Contract, as provided below. The City shall give the Contractor notice of any proposed change and an opportunity to be heard concerning those matters.

##### **14.07.1 Change in Law**

The City and the Contractor understand and agree that the California Legislature and regulatory agencies have the authority to make comprehensive changes in Solid Waste Management legislation and regulations, including but not limited to fees and charges imposed under federal, state or local law related to the provisions of solid waste services, and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Contract. The Contractor agrees that the terms and provisions of the City of Carlsbad Municipal Code, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this Contract and the Customers of the Contractor located within the Service Area. In the event any future change in the Municipal Code, or other federal, state or local laws, regulations or requirements, that materially alter the obligations of the Contractor, the City requests a change in the scope of services, or there is an increase or decrease in a fee or charge applicable to the provision of Solid Waste Services, then the affected service rates, as established in Exhibit 1 of this Contract shall be adjusted. Nothing contained in this Contract shall require any party to perform any act or function contrary to law. The City and Contractor agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Contract, the City and the Contractor shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the Contractor due to any modification in the

Contract under this Article. The City and the Contractor shall not unreasonably withhold agreement to such compensation adjustment.

#### **14.07.2 City's Right to Direct Changes**

City may direct Contractor to perform additional Solid Waste Collection and diversion services (including new diversion programs, etc.) or modify the manner in which it performs existing services or bills for services. Pilot programs and innovative services which may entail new collection methods, and different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which City may direct. Contractor shall be entitled to an adjustment in its Contractor Compensation for providing such additional or modified services, including a profit factor equal to ten percent (10%) of the incremental cost of such additional or modified services. Contractor shall be subject to an adjustment in its Contractor Compensation if City directed changes result in a reduction in costs to the Contractor. City may utilize cost components provided with Contractor's proposed rates in calculating equitable rate adjustments. If the City Manager and Contractor cannot agree upon the amount of a rate adjustment authorized pursuant to this section, the City Council shall make a final determination and its decision is final and binding.

#### **14.07.3 New Diversion Programs**

Contractor shall present, within thirty (30) days of a written request to do so by City, a proposal to provide additional or expanded diversion services. The proposal shall contain a complete description of the following:

- Collection methodology to be employed (equipment, manpower, etc.).
- Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- Labor requirements (number of employees, by classification).
- Type(s) of Containers to be utilized.
- Type(s) of materials to be collected.
- Provision for program publicity/education/marketing.
- Three-year projection of the financial results of the program's operations in an operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.
- The added cost for providing such additional or expanded diversion services.

#### **14.08 TRANSITION TO NEXT CONTRACTOR**

In the event Contractor is not awarded a Contract to continue to provide Collection Services following the expiration or early termination of this Contract, Contractor shall cooperate fully with City and any subsequent contractors to assure a smooth transition of services described in this Contract. Such cooperation shall include but not be limited to transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and list of Customers; providing a complete inventory of all carts and bins; providing adequate labor and equipment to complete performance of all Collection Services required under this Contract; taking all actions necessary to transfer ownership of carts and bins, as appropriate, to City; including transporting such containers to a location designated by the Contract Administrator; coordinating collection of materials set out in new containers if new containers are provided for a subsequent Contract and providing other reports and data required by this Contract.

Where City has reason to believe that such records or documents may be lost or discarded due to the dissolution, disbandment or termination of Contractor's business, City may, by written

request or demand of any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

## **ARTICLE 15. MISCELLANEOUS PROVISIONS**

### **15.01 GOVERNING LAW**

The law of the State of California shall govern the rights, obligations, duties and liabilities of City and Contractor under this Contract and shall govern the interpretation of this Contract.

### **15.02 JURISDICTION**

The parties agree that any litigation between City and Contractor concerning or arising out of this Contract shall be filed and maintained exclusively in the Municipal or Superior Courts of San Diego County, State of California, or in the United States District Court for the Southern District of California to the fullest extent permissible by law. Each party consents to service of process in any manner authorized by California law.

### **15.03 WAIVER**

Waiver by City or Contractor of any breach for violation of any term, covenant or condition of this Contract shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by City of any payment or any other monies which may become due from Contractor to City shall not be deemed to be a waiver by City of any breach for violation of any term, covenant or condition of this Contract.

The failure of the City at any time to require performance by the Contractor of any provision hereof shall in no way affect the right of the City thereafter to enforce same. Nor shall waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

### **15.04 ENTIRE CONTRACT; AMENDMENT**

This document incorporates and includes all prior negotiations, correspondence, conversations, contracts and understandings applicable to the matters contained in this Contract and the parties agree that there are no commitments, contracts or understandings concerning the subject matter of this Contract that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Contract shall be predicated upon any prior representations or Contracts, whether oral or written.

This Contract and the Exhibits attached hereto constitute the entire Contract and understanding between the parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto, and approved by the City Council.

Each Exhibit referred to in this Contract forms an essential part of this Contract. Each such Exhibit is a part of this Contract and each is incorporated by this reference.

### **15.05 SECTION HEADINGS**

Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Contract.

**15.06 CONSIDERATION**

It is specifically understood and agreed that the consideration inuring to the Contractor for the execution of this Contract consists of the promises, payments, covenants, rights and responsibilities contained in this Contract.

**15.07 SEVERABILITY**

If any provision of this Contract or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Contract and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

**15.08 DAMAGE BY CONTRACTOR**

If Contractor's employees or subcontractors cause any injury, damage or loss to City property, including but not limited to City streets or curbs, normal wear and tear excepted, Contractor shall reimburse City for City's cost of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of City to be indemnified by Contractor for any such injury, damage or loss. With the prior written approval of City, Contractor may repair the damage at Contractor's sole cost and expense.

**15.09 ACKNOWLEDGMENT**

It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Contract and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

**15.10 CONTRACTOR STATUS**

Contractor represents and warrants that it is duly organized, validly existing and in good standing under applicable laws. It is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Contract.

**15.11 CONTRACTOR AUTHORIZATION**

Contractor represents and warrants that it has the authority to enter into and perform its obligations under this Contract. The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Contract. The persons signing this Contract on behalf of Contractor have authority to do so. Contractor acknowledges and agrees that City may expect and assume that the actions of Contractor's Contract Liaison designated under Section 6.05.8 are taken on behalf of and with the full approval of the Contractor.

**15.12 REPRESENTATIONS**

Contractor warrants and represents that no elected official, officer, agent or employee of the City has a financial interest, directly or indirectly, in this Contract, the compensation to be paid under it and, further, that no City employee who acts in the City as a "purchasing agent" as defined in California Statutes, nor any elected or appointed officer of the City, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the Contractor and, further, that no such City employee, purchasing agent, City elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the Contractor as defined by applicable state law and regulations..

### **15.13 PERMITS & LICENSES**

Contractor shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this Contract. Contractor shall provide proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the Contract Administrator.

### **15.14 CITY OWNERSHIP**

All reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by City or Contractor in connection with the services to be performed under this Contract, whether developed directly or indirectly by City or Contractor shall be and shall remain the property of City without limitation or restrictions on the use of such materials by City. Notwithstanding the above, all financial records and data remain the property of Contractor. Contractor shall not use such materials in connection with any project not connected with this Contract without the prior written consent of the Contract Administrator. This Section does not apply to ideas or concepts described in such materials and does not apply to the format of such materials.

### **15.15 EXEMPT WASTE**

The Contractor shall not be required to collect or dispose of Exempt Waste, but may offer such services. All such Collection and disposal of Exempt Waste is not regulated under this Contract, but if provided by the Contractor shall be in strict compliance with all federal, state and local laws and regulations. If Contractor is aware of any Exempt Waste and chooses not to collect it, Contractor must notify City of the Exempt Waste. Title to Exempt Waste shall remain at all times with the generator of such material, and shall not convey to Contractor, unless the generator executes a Contractor Waste Profile form, Contractor approves such form in writing, and a copy of such form is provided to the City.

## **ARTICLE 16. NOTICES**

Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

#### **As to the CITY:**

City of Carlsbad  
Utilities Director  
5950 El Camino Real  
Carlsbad, CA 92008  
Telephone: (760) 438-2722

#### **As to the CONTRACTOR:**

Coast Waste Management, Inc.  
District Manager  
2141 Oceanside Blvd.  
Oceanside, CA 92054  
Telephone: (760) 754-4111

with copy to

Waste Management – Western Group  
7025 N. Scottsdale Road  
Suite 200  
Scottsdale, AZ 85253  
Attention: Group Legal Counsel  
Telephone: (480) 624-8573

Notices shall be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice. Facsimile transmission is acceptable notice, effective when received; facsimile transmissions received (i.e., printed) after 4:30 p.m. on any Work Day or on weekends or holidays will be deemed received on the next Work Day. The original of items that are transmitted by facsimile equipment must also be mailed as required herein.

Notice by City to Contractor of a Collection or other Customer problem or complaint may be given to Contractor orally by telephone at Contractor's local office with confirmation sent to Contractor through the Customer Service System by the end of the Work Day.

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## ARTICLE 17. AUTHORITY

The individuals executing this Agreement and the instruments referenced in it on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions of this Agreement.

CONTRACTOR


CITY OF CARLSBAD, a municipal  
corporation of the State of California

By:   
(sign here)

Jason Rose, Area Vice President and  
General Manager

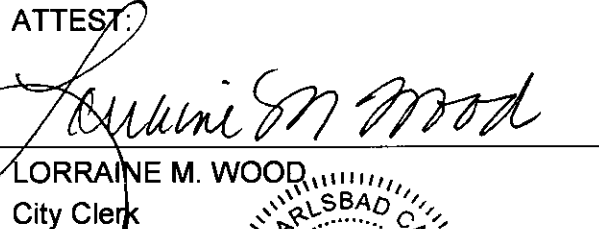
(print name/title)

By:   
Mayor

By:   
(sign here)

Lawrence Galek, Assistant Treasurer

(print name/title)

ATTEST:   
LORRAINE M. WOOD  
City Clerk



If required by City, proper notarial acknowledgment of execution by contractor must be attached. If a corporation, Agreement must be signed by one corporate officer from each of the following two groups.

**Group A**  
Chairman,  
President, **or**  
Vice-President

**Group B**  
Secretary,  
Assistant Secretary,  
CFO **or** Assistant Treasurer

**Otherwise**, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

APPROVED AS TO FORM:

RONALD R. BALL, City Attorney

BY:   
Assistant City Attorney

**EXHIBIT 1**  
**Initial Rates - Effective July 1st, 2012 (Components)**

	Service Rate	Occupancy	Disposal Rate	Contractor Total	Franchise & AB939 9.5%	Storm Water	Customer Total
<b>Residential Cart Service</b>							
<b>Standard Three Cart</b>							
3-Cart 64 or 96 Gallon	\$ 10.22	\$ 0.31	\$ 4.35	\$ 14.88	\$ 1.56	\$ 3.46	\$ 19.90
3-Cart 35 Gallon Trash (Low Generator)	\$ 10.22	\$ 0.31	\$ 2.65	\$ 13.19	\$ 1.38	\$ 3.46	\$ 18.03
Backyard Service	\$ 15.82	\$ -	\$ 3.98	\$ 19.80	\$ 2.08	\$ 3.46	\$ 25.34
<b>Multi-Family / Commercial Services (Bin Service)</b>							
<b>Pickups Per Week Commercial Can - up to Four (4) 32 gal</b>							
1	\$ 22.79	\$ 0.31	\$ 3.08	\$ 26.18	\$ 2.75	\$ 6.21	\$ 35.14
2	\$ 45.59	\$ 0.62	\$ 6.17	\$ 52.38	\$ 5.50	\$ 12.42	\$ 70.30
3	\$ 68.38	\$ 0.93	\$ 9.24	\$ 78.55	\$ 8.25	\$ 18.64	\$ 105.44
Extra Pick-up	\$ 11.62	\$ -	\$ 0.71	\$ 12.33	\$ 1.29	\$ 2.90	\$ 16.53
<b>Pickups Per Week Commercial Can - Backyard Service</b>							
1	\$ 34.10	\$ 0.31	\$ 3.08	\$ 37.50	\$ 3.94	\$ 8.84	\$ 50.27
2	\$ 68.21	\$ 0.62	\$ 6.17	\$ 75.00	\$ 7.87	\$ 17.67	\$ 100.54
<b>Pickups Per Week Commercial - Two Yard Bin</b>							
1	\$ 42.64	\$ 1.25	\$ 12.33	\$ 56.22	\$ 5.90	\$ 13.59	\$ 75.71
2	\$ 71.79	\$ 2.49	\$ 24.65	\$ 98.93	\$ 10.38	\$ 24.06	\$ 133.37
3	\$ 100.92	\$ 3.74	\$ 36.99	\$ 141.65	\$ 14.87	\$ 34.52	\$ 191.04
4	\$ 130.02	\$ 4.98	\$ 49.31	\$ 184.31	\$ 19.35	\$ 44.97	\$ 248.63
5	\$ 159.20	\$ 6.23	\$ 61.64	\$ 227.07	\$ 23.84	\$ 55.43	\$ 306.34
6	\$ 188.34	\$ 7.48	\$ 73.96	\$ 269.78	\$ 28.32	\$ 65.90	\$ 364.00
Extra Pick-up	\$ 24.17	\$ -	\$ 2.85	\$ 27.02	\$ 2.84	\$ 6.44	\$ 36.29
<b>Pickups Per Week Commercial - Three Yard Bin</b>							
1	\$ 56.00	\$ 1.87	\$ 18.49	\$ 76.36	\$ 8.02	\$ 18.54	\$ 102.92
2	\$ 98.50	\$ 3.74	\$ 36.99	\$ 139.23	\$ 14.62	\$ 33.96	\$ 187.81
3	\$ 140.99	\$ 5.61	\$ 55.48	\$ 202.08	\$ 21.21	\$ 49.37	\$ 272.66
4	\$ 183.50	\$ 7.48	\$ 73.96	\$ 264.94	\$ 27.81	\$ 64.77	\$ 357.52
5	\$ 226.00	\$ 9.35	\$ 92.45	\$ 327.80	\$ 34.41	\$ 80.18	\$ 442.39
6	\$ 268.49	\$ 11.22	\$ 110.95	\$ 390.66	\$ 41.01	\$ 95.60	\$ 527.27
Extra Pick-up	\$ 31.99	\$ -	\$ 4.27	\$ 36.26	\$ 3.81	\$ 8.66	\$ 48.72
<b>Pickups Per Week Commercial - Four Yard Bin</b>							
1	\$ 74.70	\$ 2.49	\$ 24.65	\$ 101.84	\$ 10.69	\$ 24.73	\$ 137.26
2	\$ 135.88	\$ 4.98	\$ 49.31	\$ 190.17	\$ 19.96	\$ 46.33	\$ 256.46
3	\$ 197.09	\$ 7.48	\$ 73.96	\$ 278.53	\$ 29.24	\$ 67.92	\$ 375.69
4	\$ 258.27	\$ 9.97	\$ 98.62	\$ 366.86	\$ 38.51	\$ 89.52	\$ 494.89
5	\$ 319.47	\$ 12.46	\$ 123.27	\$ 455.20	\$ 47.78	\$ 111.12	\$ 614.10
6	\$ 380.65	\$ 14.95	\$ 147.93	\$ 543.53	\$ 57.06	\$ 132.72	\$ 733.31
Extra Pick-up	\$ 37.67	\$ -	\$ 5.69	\$ 43.37	\$ 4.55	\$ 10.39	\$ 58.31
<b>Pickups Per Week Commercial - Five Yard Bin</b>							
1	\$ 93.38	\$ 3.12	\$ 30.82	\$ 127.32	\$ 13.37	\$ 30.91	\$ 171.60
2	\$ 173.28	\$ 6.23	\$ 61.64	\$ 241.15	\$ 25.31	\$ 58.71	\$ 325.17
3	\$ 253.17	\$ 9.35	\$ 92.45	\$ 354.97	\$ 37.26	\$ 86.49	\$ 478.72
4	\$ 333.05	\$ 12.46	\$ 123.27	\$ 468.79	\$ 49.21	\$ 114.27	\$ 632.26
5	\$ 412.95	\$ 15.58	\$ 154.09	\$ 582.62	\$ 61.16	\$ 142.05	\$ 785.83
6	\$ 492.84	\$ 18.69	\$ 184.91	\$ 696.44	\$ 73.11	\$ 169.85	\$ 939.40
Extra Pick-up	\$ 43.35	\$ -	\$ 7.12	\$ 50.47	\$ 5.30	\$ 12.13	\$ 67.89



	Service Rate	Occupancy	Disposal Rate	Contractor Total	Franchise & AB939 9.5%	Storm Water	Customer Total
<b>Pickups Per Week Commercial Recycling - Three Yard Bin</b>							
1	\$ 53.69	\$ 1.87	\$ -	\$ 55.56	\$ 5.83	\$ 12.62	\$ 74.01
2	\$ 90.31	\$ 3.74	\$ -	\$ 94.04	\$ 9.87	\$ 21.29	\$ 125.21
3	\$ 126.93	\$ 5.61	\$ -	\$ 132.54	\$ 13.91	\$ 29.94	\$ 176.39
4	\$ 163.54	\$ 7.48	\$ -	\$ 171.02	\$ 17.95	\$ 38.61	\$ 227.58
5	\$ 194.82	\$ 9.35	\$ -	\$ 204.17	\$ 21.43	\$ 46.04	\$ 271.64
6	\$ 233.78	\$ 11.22	\$ -	\$ 245.00	\$ 25.72	\$ 55.03	\$ 325.75
7	\$ 272.75	\$ 13.08	\$ -	\$ 285.83	\$ 30.00	\$ 64.20	\$ 380.04
Extra Pick-up	\$ 25.43	\$ -	\$ -	\$ 25.43	\$ 2.67	\$ 5.90	\$ 33.99
<b>Pickups Per Week Construction Bin Rate – Three Yard (includes delivery)</b>							
1	\$ 189.48	\$ 1.87	\$ 18.49	\$ 209.84	\$ 22.03	\$ -	\$ 231.87
2	\$ 324.53	\$ 3.74	\$ 36.99	\$ 365.26	\$ 38.34	\$ -	\$ 403.60
3	\$ 459.59	\$ 5.61	\$ 55.48	\$ 520.67	\$ 54.66	\$ -	\$ 575.33
4	\$ 594.64	\$ 7.48	\$ 73.96	\$ 676.08	\$ 70.97	\$ -	\$ 747.05
5	\$ 729.70	\$ 9.35	\$ 92.45	\$ 831.50	\$ 87.28	\$ -	\$ 918.78
Extra Pick-up	\$ 48.00	\$ -	\$ 4.27	\$ 52.27	\$ 5.49	\$ -	\$ 57.75
<b>Special Haul – 1 week or less Special Haul Bin (no Storm Water Fees) 1 week or less</b>							
1	\$ 73.98	\$ -	\$ 4.27	\$ 78.25	\$ 8.21	\$ -	\$ 86.46
<b>Pickups Per Week Commercial Recycling - Yard Waste 3 Yard</b>							
1	\$ 59.51	\$ 1.87	\$ 17.07	\$ 78.45	\$ 8.24	\$ 18.25	\$ 104.94
2	\$ 100.97	\$ 3.74	\$ 34.14	\$ 138.85	\$ 14.58	\$ 32.31	\$ 185.74
<b>Pickups Per Week Commercial Recycling - 96 Gal Cart - Green Waste</b>							
1	\$ 11.50	\$ 0.31	\$ 2.85	\$ 14.67	\$ 1.54	\$ 3.41	\$ 19.61
Extra Pick-up	\$ 6.16	\$ -	\$ 0.66	\$ 6.81	\$ 0.72	\$ 1.59	\$ 9.12
<b>Pickups Per Week Commercial Recycling - 96 Gal Cart - Recycling</b>							
1	\$ 12.32	\$ 0.31	\$ -	\$ 12.63	\$ 1.33	\$ 2.88	\$ 16.84
2	\$ 24.65	\$ 0.62	\$ -	\$ 25.27	\$ 2.65	\$ 5.76	\$ 33.68
3	\$ 36.97	\$ 0.93	\$ -	\$ 37.90	\$ 3.98	\$ 8.64	\$ 50.52
Extra Pick-up	\$ 5.49	\$ -	\$ -	\$ 5.49	\$ 0.58	\$ 1.67	\$ 7.73
<b>Split Bin Split Bin - 3 yard - must have locks on each side</b>							
1	\$ 51.41	\$ 0.93	\$ 9.24	\$ 61.59	\$ 6.46	\$ 14.84	\$ 82.89
2	\$ 92.04	\$ 1.87	\$ 18.49	\$ 112.40	\$ 11.80	\$ 27.16	\$ 151.36
3	\$ 132.66	\$ 2.80	\$ 27.73	\$ 163.20	\$ 17.13	\$ 39.49	\$ 219.82
4	\$ 173.29	\$ 3.74	\$ 36.99	\$ 214.01	\$ 22.47	\$ 51.79	\$ 288.27
5	\$ 213.89	\$ 4.67	\$ 46.23	\$ 264.79	\$ 27.80	\$ 64.13	\$ 356.72
6	\$ 254.50	\$ 5.61	\$ 55.48	\$ 315.58	\$ 33.13	\$ 76.48	\$ 425.19
Bin Exchange	\$ 42.69	\$ -	\$ -	\$ 42.69	\$ 4.48	\$ 9.90	\$ 57.07
Bin Lock Set Up Fee	\$ 26.68	\$ -	\$ -	\$ 26.68	\$ 2.80	\$ 6.19	\$ 35.67
Locking Fee	\$ 10.14	\$ -	\$ -	\$ 10.14	\$ 1.06	\$ 2.35	\$ 13.56
Overloaded Bins	\$ 26.68	\$ -	\$ -	\$ 26.68	\$ 2.80	\$ -	\$ 29.48
<b>A Bin that needs to be moved:</b>							
5 to 30 feet	\$ 3.74	\$ -	\$ -	\$ 3.74	\$ 0.39	\$ 0.87	\$ 5.00
31 to 50 feet	\$ 5.07	\$ -	\$ -	\$ 5.07	\$ 0.53	\$ 1.18	\$ 6.78
Add'l 25 feet increments	\$ 5.07	\$ -	\$ -	\$ 5.07	\$ 0.53	\$ 1.18	\$ 6.78
Special Haul Bin Delivery	\$ 34.84	\$ -	\$ -	\$ 34.84	\$ 3.66	\$ -	\$ 38.50
<b>Rolloff Service</b>							
Service Fee	\$ 179.91	\$ 5.76	\$ -	\$ 185.67	\$ 19.49	\$ -	\$ 205.16
Disposal Fee per Ton (pass through)	\$ -	\$ -	\$ 39.00	\$ 39.00	\$ 4.09	\$ -	\$ 43.09
Rolloff – Demurrage Per Day Charge	\$ 3.95	\$ -	\$ -	\$ 3.95	\$ 0.41	\$ -	\$ 4.37
Delivery	\$ 47.78	\$ -	\$ -	\$ 47.78	\$ 5.02	\$ -	\$ 52.80

	Service Rate	Occupancy	Disposal Rate	Contractor Total	Franchise & AB939 9.5%	Storm Water	Customer Total
Relocation Charge onsite	\$ 37.33	\$ -	\$ -	\$ 37.33	\$ 3.92	\$ -	\$ 41.25
Relocation Charge offsite	\$ 53.26	\$ -	\$ -	\$ 53.26	\$ 5.59	\$ -	\$ 58.85
Wash Out Receiver Boxes	\$ 42.71	\$ -	\$ -	\$ 42.71	\$ 4.48	\$ -	\$ 47.19
Dead Run charge	\$ 64.01	\$ -	\$ -	\$ 64.01	\$ 6.72	\$ -	\$ 70.73
Standby charge per min after 5 min	\$ 1.69	\$ -	\$ -	\$ 1.69	\$ 0.18	\$ -	\$ 1.87
Certified burial at Miramar plus special handling fee charged by Miramar	\$ 272.72	\$ -	\$ -	\$ 272.72	\$ 28.63	\$ -	\$ 301.35

**Other Fees and Charges:**

Extra trash cart beyond 1st one	\$ 2.03	\$ -	\$ -	\$ 2.03	\$ 0.21	\$ -	\$ 2.24
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Two additional Green Waste and/or Recycling carts will be free of charge, after that each add'l one will be a charged.

	\$ 2.03	\$ -	\$ -	\$ 2.03	\$ 0.21	\$ -	\$ 2.24
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Delivery of extra cart	\$ 10.00	\$ -	\$ -	\$ 10.00	\$ 1.05	\$ -	\$ 11.05
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Restart Fee- The fee for Restarting commercial service when a permanent account has been terminated for non-payment.

	\$ 17.10	\$ -	\$ -	\$ 17.10	\$ 1.80	\$ -	\$ 18.90
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Commercial Return to Service Fee- The return to service fee for two or more calls in a one-month period by a bin customer to return to provide service.

	\$ 56.05	\$ -	\$ -	\$ 56.05	\$ 5.88	\$ -	\$ 61.93
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Residential Return to Service Fee- The return to service fee for two or more calls in a one-month period by a residential customer to return to provide service.

	\$ 28.50	\$ -	\$ -	\$ 28.50	\$ 2.99	\$ -	\$ 31.49
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Copy Fee- The charge for copies requested by customers.

	\$ 1.19	\$ -	\$ -	\$ 1.19	\$ 0.12	\$ -	\$ 1.31
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Bin exchange/steam clean fee-allowed 2 per year. After second exchange within 1 year, there will be a charge per exchange.

	\$ 55.00	\$ -	\$ -	\$ 55.00	\$ 5.77	\$ -	\$ 60.77
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Bin paint charge fee - allowed 1 per year. After first paint within one year, there will be a charge per paint request.

	\$ 87.00	\$ -	\$ -	\$ 87.00	\$ 9.13	\$ -	\$ 96.13
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Interest Charge-Contractor may charge 1.5% interest per month on any delinquent account for such time as the bill remains unpaid after its due date.

Late Fee - There will be a minimum fee on any delinquent account - \$3 minimum.

	\$ 3.00	\$ -	\$ -	\$ 3.00	\$ 0.31	\$ -	\$ 3.31
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Single and Multi-Family dwelling customers, individual residents who live in either a single family home or a multi-family complex may have this service (3 bulky item pick ups per calendar year with 5 items maximum charge per pick up).

Bulky Item - Exceeding 5 per pick up - First item

	\$ 35.49	\$ -	\$ -	\$ 35.49	\$ 3.73	\$ -	\$ 39.22
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Bulky Item - Exceeding 5 per pick up - each add'l item

	\$ 9.10	\$ -	\$ -	\$ 9.10	\$ 0.96	\$ -	\$ 10.06
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Multi Family Complex and Commercial Bin Customers shall be charged for bulky item pickups (any bulky item that is not specifically generated by an individual resident will be charged. Ex: if an HOA remodels a building and has bulky items to dispose of there will be a charge.)

Per Bulky Item- first item

	\$ 35.49	\$ -	\$ -	\$ 35.49	\$ 3.73	\$ -	\$ 39.22
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Per Bulky Item -each add'l item

	\$ 9.10	\$ -	\$ -	\$ 9.10	\$ 0.96	\$ -	\$ 10.06
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Bulky Item requiring 2 people to handle.	\$ 50.96	\$ -	\$ -	\$ 50.96	\$ 5.35	\$ -	\$ 56.31
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Bins that are overloaded can be charged a fee.

	\$ 24.57	\$ -	\$ -	\$ 24.57	\$ 2.58	\$ -	\$ 27.15
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Contamination Fee-to recover costs for separating solid waste placed in a recycling or green waste container or for arranging a special, unscheduled collection due to contamination. For Multi-Family and Commercial customers only.

	\$ 45.25	\$ -	\$ -	\$ 45.25	\$ 4.75	\$ -	\$ 50.00
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**EXHIBIT 2**  
**Rate Adjustment Example and Methodology**

STEP ONE: Calculate Percentage Change in Index		A	B	C	D	E
Row	Rate Index	Old Index	New Index	Percent Change in Index ((Column B/Column A)-1)	Index Weighting	Total Weighted Change (Column C x D)
1	CPI - All Urban Consumers - San Diego (1)	\$ 220.92	\$ 226.00	2.30%	90%	2.07%

STEP TWO: Calculate Percentage Change in Occupancy		F	G	H
Row	Lease Payment (2)	Old Pmt/mo	New Pmt/mo	Percent Change in Lease Pmt ((Column G/Column F)-1)
2	Monthly Lease Payment	\$ 60,000.00	\$ 61,241.72	2.07%

STEP THREE: Calculate Percentage Change in Disposal MSW		I	J	K
Row	MSW Disposal Rates	Old Rate	New Rate	Percent Change in Disposal ((Column J/Column I)-1)
3	Palomar Transfer Station Tip Fee	\$ 39.00	\$ 40.00	2.56%

STEP FOUR: Apply Percentage Changes to Service, Occupancy and Disposal Components		SERVICE			
		L	M	N	O
Row	Rate Category	Current Service Component	Total Percentage Change (from Row 1 Column E)	Service Component Increase (Column L x M)	Adjusted Service Component (Column L + N)
4	Residential - (3) 96 Gal Carts	\$ 10.22	2.07%	\$ 0.21	\$ 10.43
5	Residential - (3) 35 Gal Carts-Low Generator	\$ 10.22	2.07%	\$ 0.21	\$ 10.43
6	Commercial - 1 3yd bin picked up 1 time/week	\$ 56.00	2.07%	\$ 1.16	\$ 57.16
7	Roll Off Haul (Disposal is pass through)	\$ 179.91	2.07%	\$ 3.72	\$ 183.63

		OCCUPANCY			
		P	Q	R	S
Row	Rate Category	Current Occupancy Component	Total Percentage Change (from Row 2 Column H)	Occupancy Component Increase or Decrease (Column P x Q)	Adjusted Occupancy Component (Column P + R)
8	Residential - (3) 96 Gal Carts	\$ 0.31	2.07%	\$ 0.01	\$ 0.32
9	Residential - (3) 35 Gal Carts-Low Generator	\$ 0.31	2.07%	\$ 0.01	\$ 0.32
10	Commercial - 1 3yd bin picked up 1 time/week	\$ 1.87	2.07%	\$ 0.04	\$ 1.91
11	Roll Off Haul (Disposal is pass through)	\$ 5.76	2.07%	\$ 0.12	\$ 5.88

		DISPOSAL			
		T	U	V	W
Row	Rate Category	Current Disposal Component	Total Percentage Change (from Row 3 Column K)	Disposal Component Increase or Decrease (Column T x U)	Adjusted Disposal Component (Column T + V)
12	Residential - (3) 96 Gal Carts	\$ 4.35	2.56%	\$ 0.11	\$ 4.46
13	Residential - (3) 35 Gal Carts-Low Generator	\$ 2.65	2.56%	\$ 0.07	\$ 2.72
14	Commercial - 1 3yd bin picked up 1 time/week	\$ 18.49	2.56%	\$ 0.47	\$ 18.96
15	Roll Off Haul (Disposal is pass through)		2.56%		

STEP FIVE: Add All New Components together resulting in new Contractor Total		TOTAL
		X
Row	Rate Category	Adjusted Contractor Total (Column O+S+W)
16	Residential - (3) 96 Gal Carts	\$ 15.21
17	Residential - (3) 35 Gal Carts-Low Generator	\$ 13.47
18	Commercial - 1 3yd bin picked up 1 time/week	\$ 78.03
19	Roll Off Haul (Disposal is pass through)	\$ 189.51

STEP SIX: Add Back Franchise/AB939 Fee & Storm Water Fees		Y	Z	AA	AB		
Row	Rate Category	Adjusted Contractor Total (Rows 22-27 Column X)	Franchise Fee 9.5% ((Column Y/1-.095)-Y)	Storm Water Fee (from Current Rate Schedule)	Total Adjusted Rate to Customer (Columns Y + Z + AA)	Current Rates	% increase
20	Residential - (3) 96 Gal Carts	\$ 15.21	\$ 1.60	\$ 3.46	\$ 20.27	\$ 19.90	1.8%
21	Residential - (3) 35 Gal Carts-Low Generator	\$ 13.47	\$ 1.41	\$ 3.46	\$ 18.34	\$ 18.03	1.7%
22	Commercial - 1 3yd bin picked up 1 time/week	\$ 78.03	\$ 8.19	\$ 18.54	\$ 104.76	\$102.92	1.8%
23	Roll Off Haul (Disposal is pass through)	\$ 189.51	\$ 19.89		\$ 209.41	\$205.16	2.1%

(1) Consumer price index - All Urban Consumers, San Diego, CA All Items (CUURA424SAO) as of December 31 prior to July 1st when the rate change will take effect.  
Change will be between 0% and 5% max.

(2) Lease is adjusted annually by the same percentage rate adjustment WM receives under its franchise collection agreement.

### EXHIBIT 3 PERFORMANCE BOND

Bond No. LB03-0561-TX  
Effective Date: 06/01/2003

#### PERMIT BOND

This bond #LB03-0561-TX replaces and supersedes bond #8150-37-05 effective 06/01/2003.  
**KNOW ALL MEN BY THESE PRESENTS**, that we Coast Waste Management, Inc.  
as Principal, and National Guaranty Insurance Company of Vermont, a corporation authorized to  
transact general surety business in the State of California, as Surety, are held and firmly  
bound unto the DEPARTMENT OF PUBLIC WORKS, CITY OF CARLSBAD,  
CALIFORNIA, in the penal sum of ONE MILLION & 00/100 dollars (\$1,000,000.00)  
for payment of which well and truly to be made we bind ourselves, our heirs,  
administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has applied to the Director, Department of  
Public Works, City of Carlsbad, California, for a permit to collect or transport garbage or  
rubbish and tenders this bond to comply with the provisions of Section of Ordinance No.  
6045 & 6046.

NOW, THEREFORE, IF THE ABOVE BOUNDEN principal shall well and truly  
comply with Ordinance No. 6045 & 6046 then this bond shall be null and void; otherwise  
to remain in full force and effect.

PROVIDED, HOWEVER, that the Surety herein shall have the right to withdraw as  
Surety from this bond and may do so by giving the said Principal and the Department of  
Public Works of the City of Carlsbad of the sixty (60) days written notice to that effect,  
and at the end of said sixty days period of notice, the liability of the Surety except as to  
any liabilities or indebtedness already incurred or accrued, shall cease, and said bond  
shall thereupon terminate and be of no more force and effect.

IT IS FURTHER PROVIDED, that the aggregate liability of the Surety hereunder shall  
not exceed the penal sum of this bond.

IN WITNESS WHEREOF, the Principal and Surety have hereto set their signatures this  
23rd day of May, 20 03.

Coast Waste Management, Inc.  
5960 El Camino Real  
Carlsbad, CA 92008

Principal

By: Jacqueline Kirk  
Jacqueline Kirk, Attorney-in-fact

National Guaranty Insurance Company of Vermont

Surety

By: Sandra R. Parker  
Sandra R. Parker, Attorney-in-fact

**POLICYHOLDER DISCLOSURE STATEMENT  
UNDER  
TERRORISM RISK INSURANCE ACT OF 2002**

In accordance with the Terrorism Risk Insurance Act of 2002 (the "Act"), we are providing this disclosure notice for bonds for which National Guaranty Insurance Company of Vermont is the surety and for all closure/post-closure policies for which National Guaranty Insurance Company of Vermont is the insurer. "Terrorism" is defined in the Act as an act certified by the Secretary of the Treasury (i) to be an act of terrorism, (ii) to be a violent act or an act that is dangerous to (A) human life; (B) property or (C) infrastructure, (iii) to have resulted in damage within the United States, or outside of the United States in case of an air carrier or vessel or the premises of a U.S. mission and (iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. You should read the Act for a complete description of its coverage. The Secretary's decision to certify or not to certify an event as an Act of Terrorism and thus covered by this law is final and not subject to review. There is a \$100 billion dollar annual cap on all losses resulting from Acts of Terrorism above which no coverage will be provided under this policy and under the Act unless Congress makes some other determination.

For your information, coverage provided by this policy for losses caused by an Act of Terrorism may be partially reimbursed by the United States under a formula established by the Act. Under this formula the United States pays 90% of terrorism losses covered by this law exceeding a statutorily established deductible that must be met by the insurer, and which deductible is based on a percentage of the insurer's direct earned premiums for the year preceding the Act of Terrorism.

Acts of Terrorism are not excluded from any surety bonds or closure/post-closure policies issued on your behalf. We have allocated 0% of the premium paid and/or payable to terrorism coverage.

**EXHIBIT 4**  
**City of Carlsbad Approved Parks & Facilities List for Waste Management**

Dept.	Cust. No.	Facility	Address	No. of Trash Bins	Size	No. of Collections per Week	No. of Recycling Bins	Size	No. of Collections per Week	No. of Roll-Off Bins	No. of Collections per week
Arts	94642	Arts Office/Sculpture Garden	2955 Elmwood Street	1	res.	1	2	96 gal	1	0	n/a
P & R	54774	Aviara Park	6425 Ambrosia	2	3 yrd	2	0	n/a	n/a	0	n/a
P & R	66008	Aviara Park	6425 Ambrosia	0	n/a	n/a	0	n/a	n/a	1	on call
P & R	990	Calavera Community Center	2997 Glasgow Drive	1	3 yrd	3	1	3 yrd	2	0	n/a
P & R	990	Calavera Park	2997 Glasgow Drive	2	3 yrd	3	0	n/a	n/a	1	on call
PEM	39480	Carlsbad Farmers Building	5815 El Camino Real	3	3 yrd	1	0	n/a	n/a	0	n/a
PEM	2429	Carlsbad Hiring Center	5958 El Camino Real	1	3 yrd	1	0	n/a	n/a	0	n/a
Library	203	Carlsbad Learning Center	3368 Eureka Place	1	3 yrd	2	1	3 yrd	1	0	n/a
P & R	40117	Carrillo Ranch	6200 Flying LC Lane	0	n/a	n/a	0	n/a	n/a	1	on call
P & R	41749	Carrillo Ranch	6200 Flying LC Lane	2	3 yrd	2	1	3 yrd	1	0	n/a
PEM	2446	City Hall	1200 Carlsbad Village Drive	0	n/a	n/a	1	3 yrd	1	0	n/a
PEM	19999	City Hall	1200 Carlsbad Village Drive	1	3 yrd	1	0	n/a	n/a	0	n/a
Library	65	Cole Library	1250 Carlsbad Village Dr	1	3 yrd	3	1	3 yrd	2	0	n/a
Library	23597	Dove Library	1775 Dove Street	2	3 yrd	3	2	3 yrd	3	0	n/a
P & R	997	El Fuerte Park	End of Urubu Street	1	3 yrd	1	0	n/a	n/a	0	n/a
PEM	2427	Facilities Maintenance	405 Oak Avenue	3	3 yrd	2	0	n/a	n/a	0	n/a
PEM	2562	Facilities Maintenance	405 Oak Avenue	0	n/a	n/a	2	3 yrd	2	0	n/a
PEM	24478	Faraday Center	1635 Faraday Avenue	2	3 yrd	3	2	3 yrd	2	0	n/a
Fire	2436	Fire Station #1	1275 Carlsbad Village Dr	1	3 yrd	1	1	3 yrd	1	0	n/a
Fire	1012	Fire Station #2	1906 Arenal Road	1	3 yrd	1	2	96 gal	1	0	n/a
Fire	1009	Fire Station #3	3701 Catalina Drive	1	3 yrd	1	2	96 gal	1	0	n/a
Fire	1010	Fire Station #4	6885 Batiquitos Drive	1	3 yrd	1	2	96 gal	1	0	n/a
Fire	1011	Fire Station #5	2540 Orion Way	1	3 yrd	1	1	3 yrd	1	0	n/a
Fire	65914	Fire Station #6	7201 Rancho Santa Fe Rd	1	3 yrd	1	2	96 gal	1	0	n/a
Fleet	2430	Fleet Maintenance	2480 Impala Drive	2	3 yrd	2	4	96 gal	3	0	n/a
P & R	988	Harding Community Center	3096 Harding Street	1	3 yrd	2	1	3 yrd	1	0	n/a
P & R	991	Holiday Park East	2076 Pio Pico Drive	3	3 yrd	3	0	n/a	n/a	0	n/a
P & R	992	Holiday Park North	2076 Pio Pico Drive	2	3 yrd	3	0	n/a	n/a	0	n/a
P & R	995	La Costa Canyon Park	3020 Pueblo Street	1	3 yrd	3	0	n/a	n/a	0	n/a
P & R	995	La Costa Canyon Park	3020 Pueblo Street	0	n/a	n/a	1	3 yrd	as needed	0	n/a

Dept.	Cust. No.	Facility	Address	No. of Trash Bins	Size	No. of Collections per Week	No. of Recycling Bins	Size	No. of Collections per Week	No. of Roll-Off Bins	No. of Collections per week
P & R	1329	Magee House/Park	258 Beech Avenue	1	3 yrd	2	2	96 gal	1	0	n/a
P & R	3510	Park Maintenance	1166 Carlsbad Village Dr	0	n/a	n/a	0	n/a	n/a	1	3
P & R	989	Park Maintenance	3349 Harding Street	2	3 yrd	2	0	n/a	n/a	0	n/a
P & R	2766	Poinsettia Park	6600 Hidden Valley Rd	4	3 yrd	2	1	3 yrd	1	2	on call
Police	1014	Safety Center	2560 Orion Way	2	3 yrd	2	2	3 yrd	1	0	n/a
P & R	2425	Senior Center	799 Pine Avenue	2	3 yrd	2	2	3 yrd	1	0	n/a
P & R	996	Stagecoach Park	3420 Camino de los Coches	5	3 yrd	2	1	3 yrd	1	0	n/a
P & R	993	Swim Complex	3401 Monroe Street	1	3 yrd	1	0	n/a	n/a	0	n/a
Utilities	2431	Water District	5950 El Camino Real	2	3 yrd	2	0	n/a	n/a	0	n/a
Utilities	26578	Water District	5950 El Camino Real	0	n/a	n/a	1	3 yrd	2	0	n/a
Utilities	26578	Water District	5950 El Camino Real	0	n/a	n/a	1	4 yrd	2	0	n/a
P & R	Sp. Evnt	Zone 5 Park-Renovations	Camino Hills/Faraday								on call
P & R	Sp. Evnt	Chase Field-Renovations	3349 Harding Street								on call
P & R	Sp. Evnt	Stagecoach Park-Renovations	3420 Camino de los Coches								on call
P & R	Sp. Evnt	Poinsettia Park-Renovations	6600 Hidden Valley Rd								on call
P & R	Sp. Evnt	Calavera Park-Renovations	2997 Glasgow Drive								on call
P & R	Sp. Evnt	National Trails Event-	Calavera Lake								on call
P & R	Sp. Evnt	Summer Beach Trash	Oak St. South to Cannon Park	4							on call
Arts	Sp. Evnt	Jazz in the Park - multiple	Various parks	2	3 yrd	1	2	3 yrd	1		on call
Housing	Sp. Evnt	Halloween on Elm	Downtown Carlsbad								on call
Housing	Sp. Evnt	Halloween on Elm	Downtown Carlsbad								on call
Housing	Sp. Evnt	Explore the World	TBD								on call
P & R	Sp. Evnt	Carlsbad Triathlon	Carlsbad Blvd								on call
P & R	Sp. Evnt	Carlsbad Triathlon	2525 El Camino Real								on call
P & R	Sp. Evnt	Eggstravaganza	TBD								on call
Safety	TBD	Safety Training Center	TBD								TBD
Parks	TBD	Alga Norte Park	TBD								TBD

Special Event requests to be coordinated through the Contract Administrator or their designee and Community & Municipal Relations Representative or other designee (WM).



## EXHIBIT 5 Bulky Waste

### Acceptable Bulky Waste but limited to the following Items:

Barbeque (no propane tank)	Hutch
Basketball Hoop (6 feet or less)	Ladder (8 feet or less)
Bath Tub (no shower)	Lawn Mower (no gas)
Bed Frame	Mattress
Bikes	Mirrors **
Bookshelf	Patio Furniture (one item)
Boxspring	Pool (kid's wading)
Buffett	Refrigerator
Bureau	Rugs
Chair/Recliner	Sink
Closet Doors (2) non-glass	Spa Cover (cut in half)
Couch/Sofa/Davenport	Stove
Desk	Swing Set **
Dishwasher	Table (dining, end, coffee)
Door	Toilet
Dresser	Washer
Dryer	Water Heater (empty of water)
File Cabinet	Weight Bench
Freezer	Wheel barrow
Garage Door Opener	Wood/Lumber (4'x18" bundles, maximum 4 bundles)
Gym Set **	

### \*\* REQUIRES SPECIAL HANDLING

Mirrors – Package between two pieces of cardboard, or completely tape the mirrored area with heavy duty tape to prevent shattering.

Gym Set – Disassemble and bundle

Swing Set – Disassemble and bundle

### Non Acceptable Items:

Auto Parts	Plywood / Wallboard
Bath Tubs w/showers attached	Pool
Boats	Pool Table
Cabinets (bathroom, kitchen, etc.)	Roofing
Camper Shell	Satellite Dish
Carpet	Shopping Cart
Construction & Demolition Debris	Shower Module
Electronic Waste	Sliding Glass Door
Fencing	Spa
Garage Door	Tires
Green Waste	Tree Stump
Household Hazardous Waste	Universal Waste (batteries/fluorescent bulbs
Piano	Windows

**EXHIBIT 6**  
**County of San Diego Franchise City Rates as of July 1, 2011**

**Residential Rates:**

City	Rate to Customer	Franchise Fees	AB939	Storm Water	HHW	Net Fees to Hauler
Carlsbad	\$ 18.87	\$ 1.15	\$ 0.31	\$ 3.46	\$ -	\$ 13.95
National City	\$ 16.64	\$ 1.50	\$ 0.50	\$ -	\$ -	\$ 14.64
Escondido	\$ 17.91	\$ 1.72	\$ 0.21	\$ -	\$ 0.52	\$ 15.46
Oceanside	\$ 19.44	\$ 3.14	\$ -	\$ 0.64	\$ -	\$ 15.66
San Marcos	\$ 20.39	\$ 1.41	\$ 0.53	\$ 2.18	\$ -	\$ 16.27
Lemon Grove	\$ 19.77	\$ 3.16	\$ 0.19	\$ -	\$ -	\$ 16.42
Coronado	\$ 17.67	\$ -	\$ 1.24	\$ -	\$ -	\$ 16.43
Santee	\$ 19.30	\$ 2.08	\$ 0.44	\$ -	\$ -	\$ 16.77
Imperial Beach	\$ 26.37	\$ 9.49	\$ -	\$ -	\$ -	\$ 16.88
Poway	\$ 23.76	\$ 2.01	\$ 1.20	\$ 3.65	\$ -	\$ 16.90
El Cajon	\$ 20.65	\$ 3.10	\$ 0.61	\$ -	\$ -	\$ 16.94
La Mesa	\$ 18.42	\$ 0.71	\$ 0.62	\$ -	\$ 0.11	\$ 16.98
Del Mar	\$ 18.91	\$ 1.61	\$ 0.28	\$ -	\$ -	\$ 17.02
Chula Vista	\$ 20.00	\$ 1.90	\$ 1.00	\$ -	\$ -	\$ 17.10
Vista	\$ 19.22	\$ 1.54	\$ 0.07	\$ -	\$ -	\$ 17.61
Encinitas	\$ 18.77	\$ 0.93	\$ 0.21	\$ -	\$ -	\$ 17.63
Solana Beach	\$ 22.88	\$ 1.52	\$ -	\$ 2.64	\$ -	\$ 18.72

**Commercial Rates:**

City	Rate to Customer	Franchise Fees	AB939	Storm Water	HHW	Net Fees to Hauler
Carlsbad	\$ 98.85	\$ 6.02	\$ 1.61	\$ 18.54	\$ -	\$ 72.68
Oceanside	\$ 94.77	\$ 15.32	\$ -	\$ 3.16	\$ -	\$ 76.29
Chula Vista	\$ 95.84	\$ 9.11	\$ 4.79	\$ -	\$ -	\$ 81.94
Escondido	\$ 96.29	\$ 9.56	\$ 0.21	\$ -	\$ 0.52	\$ 86.00
Santee	\$ 99.00	\$ 10.69	\$ 2.27	\$ -	\$ -	\$ 86.04
San Marcos	\$ 104.53	\$ 7.54	\$ -	\$ 10.22	\$ -	\$ 86.77
El Cajon	\$ 107.27	\$ 16.09	\$ 3.17	\$ -	\$ -	\$ 88.01
Solana Beach	\$ 107.38	\$ 7.68	\$ 1.09	\$ 10.25	\$ -	\$ 88.36
Encinitas	\$ 93.90	\$ 4.68	\$ 0.33	\$ -	\$ -	\$ 88.89
La Mesa	\$ 97.32	\$ 3.70	\$ 4.12	\$ -	\$ 0.59	\$ 88.91
Lemon Grove	\$ 100.28	\$ 10.03	\$ 1.02	\$ -	\$ -	\$ 89.23
Imperial Beach	\$ 141.05	\$ 50.78	\$ -	\$ -	\$ -	\$ 90.27
Poway	\$ 131.90	\$ 10.20	\$ -	\$ 29.90	\$ -	\$ 91.80
National City	\$ 104.75	\$ 9.43	\$ 3.02	\$ -	\$ -	\$ 92.30
Del Mar	\$ 104.05	\$ 8.84	\$ 1.56	\$ -	\$ -	\$ 93.65
Vista	\$ 103.93	\$ 8.31	\$ -	\$ -	\$ -	\$ 95.62
Coronado	\$ 102.99	\$ -	\$ 7.21	\$ -	\$ -	\$ 95.78

**EXHIBIT 7**  
**Profit Margin - Calculation Example**

**WASTE MANAGEMENT**

*Allocated Income Statement-Carlsbad  
For the Period Ending December 31, 2010*

Revenues		Pass-Through Expenses	Allowable Expenses
Sales-Commercial	\$ 6,247,443		
Sales-Residential	\$ 5,586,174		
Sales-Industrial	\$ 1,946,594		
Recycling Material Sales	\$ 1,121,878		
Other Revenue	\$ 30,296		
<b>Total Revenues</b>	<b>\$ 14,932,385</b>		
<b>Operating Expenses</b>			
Landfill Disposal	\$ 4,209,505	\$ 4,209,505	
Franchise Fees	\$ 1,296,956	\$ 1,296,956	
Salaries and Wages	\$ 2,121,315		
Insurance and Benefits	\$ 410,414		
Payroll Taxes	\$ 162,541		
Trucks- Fuel and Environment	\$ 692,096		
Trucks-Insurance and Claims	\$ 114,211		
Trucks-Depreciation	\$ 617,839		
Trucks-Maintenance and Supplies	\$ 820,284		
Containers-Depreciation	\$ 335,386		
Ops Support-Labor	\$ 583,665		
Ops Support - Rent at PTS	\$ 180,000	\$ 180,000	
Ops Support-Building and Equip	\$ 279,693		
<b>Total Operating Expense</b>	<b>\$ 11,823,905</b>	<b>\$ 5,686,461</b>	<b>\$ 6,137,444</b>
<b>Sales, General and Administrative</b>			
Local General and Administrative	\$ 21,000		
Market Area Support	\$ 1,415,911		
Group Support	\$ 63,749		
Corporate Support	\$ 405,081		
<b>Total General and Administrative</b>	<b>\$ 1,905,741</b>		<b>\$ 1,905,741</b>
<b>Other Expenses</b>			
Internet Expense	\$ 74,629		
Other Expenses			
<b>Total Other Expenses</b>	<b>\$ 74,629</b>		<b>\$ 74,629</b>
<b>TOTAL EXPENSES</b>	<b>\$ 13,804,275</b>		<b>\$ 8,117,814</b>
<b>EARNINGS BEFORE TAX</b>	<b>\$ 1,128,110</b>		<b>\$ 1,128,110</b>
<b>Profit Margin Percentage</b>			<b>13.90%</b>